of technical assistance to that applicant.

§ 213.4 Disclosure of receipt of technical assistance.

An eligible small business that has received technical assistance from the Office must state that it has received technical assistance from the Trade Remedy Assistance Office in any resulting petition, complaint or application which is filed with the Commission or any other agency which administers the trade law under which remedies or benefits are sought.

§ 213.5 Access to Commission resources.

Commission resources, in addition to the Office's resources, are available to an eligible small business to the same extent as those resources are available to members of the general public. No special rights of access to Commission resources shall be accorded to an eligible small business.

§ 213.6 Information concerning assistance.

Any person may contact the Office with questions regarding eligibility for technical assistance. Summaries of the trade laws and the SBA size standards can be obtained by writing to the Trade Remedy Assistance Office, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

CHAPTER III—INTERNATIONAL TRADE ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

Subpart A—Scope and Definitions

Sec.

Subpart B—Antidumping and Countervailing Duty Procedures

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Subpart E—Identification and Measurement of Countervailable Subsidies

Subpart F—Subsidy Determinations Regarding Cheese Subject to an In-Quota Rate of Duty

Subpart G—Applicability Dates

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.*; and 19 U.S.C. 3538.

SOURCE: 62 FR 27379, May 19, 1997, unless otherwise noted.

Subpart A—Scope and Definitions

§ 351.101 Scope.

(a) *In general.* This part contains procedures and rules applicable to antidumping and countervailing duty proceedings under title VII of the Act (19 U.S.C. 1671 *et seq.*), and also determinations regarding cheese subject to an in-quota rate of duty under section 702 of the Trade Agreements Act of 1979 (19 U.S.C. 1202 note). This part reflects statutory amendments made by titles I, II, and IV of the Uruguay Round Agreements Act, Pub. L. 103–465, which, in turn, implement into United States law the provisions of the following agreements annexed to the Agreement Establishing the World Trade Organization: Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994; Agreement on Subsidies and Countervailing Measures; and Agreement on Agriculture.

(b) *Countervailing duty investigations involving imports not entitled to a material injury determination.* Under section 701(c) of the Act, certain provisions of the Act do not apply to countervailing duty proceedings involving imports from a country that is not a Subsidies Agreement country and is not entitled to a material injury determination by the Commission. Accordingly, certain provisions of this part referring to the Commission may not apply to such proceedings.

(c) *Application to governmental importations.* To the extent authorized by

section 771(20) of the Act, merchandise imported by, or for the use of, a department or agency of the United States Government is subject to the imposition of countervailing duties or antidumping duties under this part.

§ 351.102 Definitions.

(a) *Introduction.* The Act contains many technical terms applicable to antidumping and countervailing duty proceedings. In the case of terms that are not defined in this section or other sections of this part, readers should refer to the relevant provisions of the Act. This section:

(1) Defines terms that appear in the Act but are not defined in the Act;

(2) Defines terms that appear in this Part but do not appear in the Act; and

(3) Elaborates on the meaning of certain terms that are defined in the Act.

(b) *Definitions.*

Act. ''Act'' means the Tariff Act of 1930, as amended.

Administrative review. ''Administrative review'' means a review under section 751(a)(1) of the Act.

Affiliated persons; affiliated parties. ''Affiliated persons'' and ''affiliated parties'' have the same meaning as in section 771(33) of the Act. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Secretary will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretary will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. The Secretary will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

Aggregate basis. ''Aggregate basis'' means the calculation of a country-wide subsidy rate based principally on information provided by the foreign government.

Anniversary month. ''Anniversary month'' means the calendar month in which the anniversary of the date of publication of an order or suspension of investigation occurs.

APO. ''APO'' means an administrative protective order described in section 777(c)(1) of the Act.

Applicant. ''Applicant'' means a representative of an interested party that has applied for access to business proprietary information under an administrative protective order.

Article 4/Article 7 Review. ''Article 4/Article 7 review'' means a review under section 751(g)(2) of the Act.

Article 8 violation review. ''Article 8 violation review'' means a review under section 751(g)(1) of the Act.

Authorized applicant. ''Authorized applicant'' means an applicant that the Secretary has authorized to receive business proprietary information under an APO under section 777(c)(1) of the Act.

Changed circumstances review. ''Changed circumstances review'' means a review under section 751(b) of the Act.

Consumed in the production process. Inputs ''consumed in the production process'' are inputs physically incorporated, energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the product.

Cumulative indirect tax. ''Cumulative indirect tax'' means a multi-staged tax levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production.

Customs Service. ''Customs Service'' means the United States Customs Service of the United States Department of the Treasury.

Department. ''Department'' means the United States Department of Commerce.

Direct tax. ''Direct tax'' means a tax on wages, profits, interests, rents, royalties, and all other forms of income, a tax on the ownership of real property, or a social welfare charge.

Domestic interested party. ''Domestic interested party'' means an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) of the Act.

Expedited antidumping review. ''Expedited antidumping review'' means a review under section 736(c) of the Act.

Expedited sunset review. ''Expedited sunset review'' means an expedited sunset review conducted by the Department where respondent interested parties provide inadequate responses to a notice of initiation under section 751(c)(3)(B) of the Act and § 351.218(e)(1)(ii).

Export insurance. ''Export insurance'' includes, but is not limited to, insurance against increases in the cost of exported products, nonpayment by the customer, inflation, or exchange rate risks.

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.

Fair value. ''Fair value'' is a term used during an antidumping investigation, and is an estimate of normal value.

Firm. For purposes of subpart E (Identification and Measurement of Countervailable Subsidies), ''firm'' is used to refer to the recipient of an alleged countervailable subsidy, including any individual, company, partnership, corporation, joint venture, association, organization, or other entity.

Full sunset review. ''Full sunset review'' means a full sunset review conducted by the Department under section 751(c)(5) of the Act where both domestic interested parties and respondent interested parties provide adequate response to a notice of initiation under section 751(c)(3)(B) of the Act and §§ 351.218(e)(1)(i) and 351.218(e)(1)(ii).

Government-provided. ''Government-provided'' is a shorthand expression for an act or practice that is alleged to be a countervailable subsidy. The use of the term ''government-provided'' is not intended to preclude the possibility that a government may provide a countervailable subsidy indirectly in a manner described in section 771(5)(B)(iii) of the Act (indirect financial contribution).

Import charge. ''Import charge'' means a tariff, duty, or other fiscal charge that is levied on imports, other than an indirect tax.

Importer. ''Importer'' means the person by whom, or for whose account, subject merchandise is imported.

Indirect tax. ''Indirect tax'' means a sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, a border tax, or any other tax other than a direct tax or an import charge.

Investigation. Under the Act and this Part, there is a distinction between an antidumping or countervailing duty *investigation* and a *proceeding.* An ''investigation'' is that segment of a proceeding that 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.

Loan. ''Loan'' means a loan or other form of debt financing, such as a bond.

Long-term loan. ''Long-term loan'' means a loan, the terms of repayment for which are greater than one year.

New shipper review. ''New shipper review'' means a review under section 751(a)(2) of the Act.

Order. An ''order'' is an order issued by the Secretary under section 303, section 706, or section 736 of the Act or a finding under the Antidumping Act, 1921.

Ordinary course of trade. ''Ordinary course of trade'' has the same meaning as in section 771(15) of the Act. The Secretary may consider sales or transactions to be outside the ordinary course of trade if the Secretary determines, based on an evaluation of all of the circumstances particular to the sales in question, that such sales or transactions have characteristics that are extraordinary for the market in question. Examples of sales that the Secretary might consider as being outside the ordinary course of trade are sales or transactions involving off-quality merchandise or merchandise

produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price.

Party to the proceeding. ''Party to the proceeding'' means any interested party that actively participates, through written submissions of factual information or written argument, in a segment of a proceeding. Participation in a prior segment of a proceeding will not confer on any interested party ''party to the proceeding'' status in a subsequent segment.

Person. ''Person'' includes any interested party as well as any other individual, enterprise, or entity, as appropriate.

Price adjustment. ''Price adjustment'' means any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay.

Prior-stage indirect tax. ''Prior-stage indirect tax'' means an indirect tax levied on goods or services used directly or indirectly in making a product.

Proceeding. A ''proceeding'' begins on the date of the filing of a petition under section 702(b) or section 732(b) of the Act or the publication of a notice of initiation in a self-initiated investigation under section 702(a) or section 732(a) of the Act, 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.

Rates. ''Rates'' means the individual weighted-average dumping margins, the individual countervailable subsidy rates, the country-wide subsidy rate, or the all-others rate, as applicable.

Respondent interested party. ''Respondent interested party'' means an interested party described in subparagraph (A) or (B) of section 771(9) of the Act.

Sale. A ''sale'' includes a contract to sell and a lease that is equivalent to a sale.

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 determinations under title VII of the Act and this Part.

Section 753 review. ''Section 753 review'' means a review under section 753 of the Act.

Section 762 review. ''Section 762 review'' means a review under section 762 of the Act.

Segment of proceeding.

(1) *In general*. An antidumping or countervailing duty proceeding consists of one or more *segments*. ''Segment of a proceeding'' or ''segment of the proceeding'' refers to a portion of the proceeding that is reviewable under section 516A of the Act.

(2) *Examples*. An antidumping or countervailing duty investigation or a review of an order or suspended investigation, or a scope inquiry under § 351.225, each would constitute a segment of a proceeding.

Short-term loan. ''Short-term loan'' means a loan, the terms of repayment for which are one year or less.

Sunset review. ''Sunset review'' means a review under section 751(c) of the Act.

Suspension of liquidation. ''Suspension of liquidation'' refers to a suspension of liquidation ordered by the Secretary under the authority of title VII of the Act, the provisions of this Part, or section 516a(g)(5)(C) of the Act, or by a court of the United States in a lawsuit involving action taken, or not taken, by the Secretary under title VII of the Act or the provisions of this Part.

Third country. For purposes of subpart D, ''third country'' means a country other than the exporting country and the United States. Under section 773(a) of the Act and subpart D, in certain circumstances the Secretary may determine normal value on the basis of sales to a third country.

URAA. ''URAA'' means the Uruguay Round Agreements Act.

[62 FR 27379, May 19, 1997, as amended at 63 FR 13520, Mar. 20, 1998; 63 FR 65407, Nov. 25, 1998]

§ 351.103 Central Records Unit and Administrative Protective Order Unit.

(a) Import Administration's Central Records Unit maintains a Public File Room in Room B–099 and a Dockets Center in Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230. The office hours of the Public File Room and Dockets Center are between 8:30 a.m. and 5:00 p.m. on business days. Among other things, the Central Records Unit is responsible for maintaining an official and public record for each antidumping and countervailing duty proceeding (see § 351.104), the Subsidies Library (see section 775(2) and section 777(a)(1) of the Act), and the service list for each proceeding (see paragraph (c) of this section).

(b) *Filing of documents with the Department.* While persons are free to provide Department officials with courtesy copies of documents, no document will be considered as having been received by the Secretary unless it is submitted to the Import Administration Dockets Center in Room 1870 and is stamped with the date and time of receipt.

(c) *Service list.* The Central Records Unit will maintain and make available a service list for each segment of a proceeding. Each interested party that asks to be included on the service list for a segment of a proceeding must designate a person to receive service of documents filed in that segment. The service list for an application for a scope ruling is described in § 351.225(n).

(d) Import Administration's Administrative Protective Order Unit (APO Unit) is located in Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230. The office hours of the APO Unit are between 8:30 a.m. and 5:00 p.m. on business days. Among other things, the APO Unit is responsible for issuing administrative protective orders (APOs), maintaining the APO service list, releasing business proprietary information under APO, and APO violation investigations. The APO Unit also is the contact point for questions and concerns regarding claims for business proprietary treatment of information and proper public versions of submissions under § 351.105 and § 351.304.

[63 FR 24401, May 4, 1998]

§ 351.104 Record of proceedings.

(a) *Official record*—(1) *In general.* The Secretary will maintain in the Central Records Unit an official record of each antidumping and countervailing duty proceeding. The Secretary will include in the official record all factual information, written argument, or other material developed by, presented to, or obtained by the Secretary during the course of a proceeding that pertains to the proceeding. The official 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 official record will contain material that is public, business proprietary, privileged, and classified. For purposes of section 516A(b)(2) of the Act, the record is the official record of each segment of the proceeding.

(2) *Material returned.* (i) The Secretary, in making any determination under this part, will not use factual information, written argument, or other material that the Secretary returns to the submitter.

(ii) The official record will include a copy of a returned document, solely for purposes of establishing and documenting the basis for returning the document to the submitter, if the document was returned because:

(A) The document, although otherwise timely, contains untimely filed new factual information (*see* § 351.301(b));

(B) The submitter made a nonconforming request for business proprietary treatment of factual information (*see* § 351.304);

(C) The Secretary denied a request for business proprietary treatment of factual information (*see* § 351.304);

(D) The submitter is unwilling to permit the disclosure of business proprietary information under APO (*see* § 351.304).

(iii) In no case will the official record include any document that the Secretary returns to the submitter as untimely filed, or any unsolicited questionnaire response unless the response is a voluntary response accepted under § 351.204(d) (*see* § 351.302(d)).

(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 contained in the official record (*see* paragraph (a) of this section) that the Secretary decides is public information under § 351.105(b), government memoranda or portions of memoranda that the Secretary decides may be disclosed to the general public, and 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* § 351.103). 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.

§ 351.105 Public, business proprietary, privileged, and classified information.

(a) *Introduction.* There are four categories of information in an antidumping or countervailing duty proceeding: public, business proprietary, privileged, and classified. In general, public information is information that may be made available to the public, whereas business proprietary information may be disclosed (if at all) only to authorized applicants under an APO. Privileged and classified information may not be disclosed at all, even under an APO. This section describes the four categories of information.

(b) *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 as business proprietary by the person submitting it;

(3) Factual information that, although designated as business proprietary by the person submitting it, is in a form that cannot be associated with or otherwise used to identify activities of a particular person or that the Secretary determines is not properly designated as business proprietary;

(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 as business proprietary.

(c) *Business proprietary information.* The Secretary normally will consider the following factual information to be business 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 components of prices, such as transportation, if based on published schedules, dates of sale, product descriptions (other than business or trade secrets described in paragraph (c)(1) of this section), or order numbers);

(6) 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) In an antidumping proceeding, the exact amount of the dumping margin on individual sales;

(8) In a countervailing duty proceeding, the exact amount of the benefit applied for or received by a person from each of the programs under investigation or review (but not descriptions of the operations of the programs, or

the amount if included in official public statements or documents or publications, or the *ad valorem* countervailable subsidy rate calculated for each person under a program);

(9) The names of particular persons from whom business proprietary information was obtained;

(10) The position of a domestic producer or workers regarding a petition; and

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

(d) *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. Privileged information is exempt from disclosure to the public or to representatives of interested parties.

(e) *Classified information.* Classified information is information that is classified under Executive Order No. 12356 of April 2, 1982 (47 FR 14874 and 15557, 3 CFR 1982 Comp. p. 166) or successor executive order, if applicable. Classified information is exempt from disclosure to the public or to representatives of interested parties.

§ 351.106 De minimis net countervailable subsidies and weighted-average dumping margins disregarded.

(a) *Introduction.* Prior to the enactment of the URAA, the Department had a well-established and judicially sanctioned practice of disregarding net countervailable subsidies or weighted-average dumping margins that were *de minimis.* The URAA codified in the Act the particular *de minimis* standards to be used in antidumping and countervailing duty investigations. This section discussed the application of the *de minimis* standards in antidumping or countervailing duty proceedings.

(b) *Investigations*—(1) *In general.* In making a preliminary or final antidumping or countervailing duty determination in an investigation (*see* sections 703(b), 733(b), 705(a), and 735(a) of the Act), the Secretary will apply the *de minimis* standard set forth in section 703(b)(4) or section 733(b)(3) of the Act (whichever is applicable).

(2) *Transition rule.* (i) If:

(A) The Secretary resumes an investigation that has been suspended (*see* section 704(i)(1)(B) or section 734(i)(1)(B) of the Act); and

(B) The investigation was initiated before January 1, 1995, then

(ii) The Secretary will apply the *de minimis* standard in effect at the time that the investigation was initiated.

(c) *Reviews and other determinations*—(1) *In general.* In making any determination other than a preliminary or final antidumping or countervailing duty determination in an investigation (*see* paragraph (b) of this section), the Secretary will treat as *de minimis* any weighted-average dumping margin or countervailable subsidy rate that is less than 0.5 percent *ad valorem*, or the equivalent specific rate.

(2) *Assessment of antidumping duties.* The Secretary will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the relevant period of review made by any person for which the Secretary calculates an assessment rate under § 351.212(b)(1) that is less than 0.5 percent *ad valorem*, or the equivalent specific rate.

§ 351.107 Cash deposit rates for nonproducing exporters; rates in antidumping proceedings involving a nonmarket economy country.

(a) *Introduction.* This section deals with the establishment of cash deposit rates in situations where the exporter is not the producer of subject merchandise, the selection of the appropriate cash deposit rate in situations where entry documents do not indicate the producer of subject merchandise, and the calculation of dumping margins in antidumping proceedings involving imports from a nonmarket economy country.

(b) *Cash deposit rates for nonproducing exporters*—(1) *Use of combination rates*—(i) *In general.* In the case of subject merchandise that is exported to the United States by a company that is not the producer of the merchandise, the

Secretary may establish a ''combination'' cash deposit rate for each combination of the exporter and its supplying producer(s).

(ii) *Example.* A nonproducing exporter (Exporter A) exports to the United States subject merchandise produced by Producers X, Y, and Z. In such a situation, the Secretary may establish cash deposit rates for Exporter A/Producer X, Exporter A/Producer Y, and Exporter A/Producer Z.

(2) *New supplier.* In the case of subject merchandise that is exported to the United States by a company that is not the producer of the merchandise, if the Secretary has not established previously a combination cash deposit rate under paragraph (b)(1)(i) of this section for the exporter and producer in question or a noncombination rate for the exporter in question, the Secretary will apply the cash deposit rate established for the producer. If the Secretary has not previously established a cash deposit rate for the producer, the Secretary will apply the ''all-others rate'' described in section 705(c)(5) or section 735(c)(5) of the Act, as the case may be.

(c) *Producer not identified*—(1) *In general.* In situations where entry documents do not identify the producer of subject merchandise, if the Secretary has not established previously a noncombination rate for the exporter, the Secretary may instruct the Customs Service to apply as the cash deposit rate the higher of:

(i) the highest of any combination cash deposit rate established for the exporter under paragraph (b)(1)(i) of this section;

(ii) the highest cash deposit rate established for any producer other than a producer for which the Secretary established a combination rate involving the exporter in question under paragraph (b)(1)(i) of this section; or

(iii) the ''all-others rate'' described in section 705(c)(5) or section 735(c)(5) of the Act, as the case may be.

(2) [Reserved]

(d) *Rates in antidumping proceedings involving nonmarket economy countries.* In an antidumping proceeding involving imports from a nonmarket economy country, ''rates'' may consist of a single dumping margin applicable to all exporters and producers.

Subpart B—Antidumping and Countervailing Duty Procedures

§ 351.201 Self-initiation.

(a) *Introduction.* Antidumping and countervailing duty investigations may be initiated as the result of a petition filed by a domestic interested party or at the Secretary's own initiative. This section contains rules regarding the actions the Secretary will take when the Secretary self-initiates an investigation.

(b) *In general.* When the Secretary self-initiates an investigation under section 702(a) or section 732(a) of the Act, the Secretary will publish in the FEDERAL REGISTER notice of ''Initiation of Antidumping (Countervailing Duty) Investigation.'' In addition, the Secretary will notify the Commission at the time of initiation of the investigation, and will make available to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determination.

(c) *Persistent dumping monitoring.* To the extent practicable, the Secretary will expedite any antidumping investigation initiated as the result of a monitoring program established under section 732(a)(2) of the Act.

§ 351.202 Petition requirements.

(a) *Introduction.* The Secretary normally initiates antidumping and countervailing duty investigations based on petitions filed by a domestic interested party. This section contains rules concerning the contents of a petition, filing requirements, notification of foreign governments, pre-initiation communications with the Secretary, and assistance to small businesses in preparing petitions. Petitioners are also advised to refer to the Commission's regulations concerning the contents of petitions, currently 19 CFR 207.11.

(b) *Contents of petition.* A petition requesting the imposition of antidumping or countervailing duties must contain the following, to the extent reasonably available to the petitioner:

(1) The name, address, and telephone number 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, addresses, and telephone numbers of all other known persons in the industry;

(3) Information relating to the degree of industry support for the petition, including:

(i) The total volume and value of U.S. production of the domestic like product; and

(ii) The volume and value of the domestic like product produced by the petitioner and each domestic producer identified;

(4) A statement indicating whether the petitioner has filed for relief from imports of the subject merchandise under section 337 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);

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

(6) The name of the country in which the subject merchandise is manufactured or produced and, if the merchandise is imported from a country other than the country of manufacture or production, the name of any intermediate country from which the merchandise is imported;

(7) (i) In the case of an antidumping proceeding:

(A) The names and addresses of each person the petitioner believes sells the subject merchandise at less than fair value and the proportion of total exports to the United States that 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);

(B) All factual information (particularly documentary evidence) relevant to the calculation of the export price and the constructed export price of the subject merchandise and the normal value of the foreign like product (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 country of production of the subject merchandise);

(C) If the merchandise is from a country that the Secretary has found to be a nonmarket economy country, factual information relevant to the calculation of normal value, using a method described in § 351.408; or

(ii) In the case of a countervailing duty proceeding:

(A) The names and addresses of each person the petitioner believes benefits from a countervailable subsidy and exports the subject merchandise to the United States and the proportion of total exports to the United States that 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);

(B) The alleged countervailable subsidy and factual information (particularly documentary evidence) relevant to the alleged countervailable subsidy, including any law, regulation, or decree under which it is provided, the manner in which it is paid, and the value of the subsidy to exporters or producers of the subject merchandise;

(C) If the petitioner alleges an upstream subsidy under section 771A of the Act, factual information regarding:

(1) Countervailable subsidies, other than an export subsidy, that an authority of the affected country provides to the upstream supplier;

(2) The competitive benefit the countervailable subsidies bestow on the subject merchandise; and

(3) The significant effect the countervailable subsidies have on the cost of producing the subject merchandise;

(8) The volume and value of the subject merchandise imported during the most recent two-year period and any other recent period that the petitioner believes to be more representative or,

if the subject merchandise was not imported during the two-year period, information as to the likelihood of its sale for importation;

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

(10) Factual information regarding material injury, threat of material injury, or material retardation, and causation;

(11) If the petitioner alleges ''critical circumstances'' under section 703(e)(1) or section 733(e)(1) of the Act and § 351.206, factual information regarding:

(i) Whether imports of the subject merchandise are likely to undermine seriously the remedial effect of any order issued under section 706(a) or section 736(a) of the Act;

(ii) Massive imports of the subject merchandise in a relatively short period; and

(iii) (A) In an antidumping proceeding, either:

(*1*) A history of dumping; or

(*2*) The importer's knowledge that the exporter was selling the subject merchandise at less than its fair value, and that there would be material injury by reason of such sales; or

(B) In a countervailing duty proceeding, whether the countervailable subsidy is inconsistent with the Subsidies Agreement; and

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

(c) *Simultaneous filing and certification.* 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. Factual information in the petition must be certified, as provided in § 351.303(g). Other filing requirements are set forth in § 351.303.

(d) *Business proprietary status of information.* The Secretary will treat as business proprietary any factual information for which the petitioner requests business proprietary treatment and which meets the requirements of § 351.304.

(e) *Amendment of petition.* The Secretary may 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. If the amendment consists of new allegations, the timeliness of the new allegations will be governed by § 351.301.

(f) *Notification of representative of the exporting country.* Upon receipt of a petition, the Secretary will deliver a public version of the petition (*see* § 351.304(c)) to a representative in Washington, DC, of the government of any exporting country named in the petition.

(g) *Petition based upon derogation of an international undertaking on official export credits.* In the case of a petition described in section 702(b)(3) of the Act, the petitioner must file a copy of the petition with the Secretary of the Treasury, as well as with the Secretary and the Commission, and must so certify in submitting the petition to the Secretary.

(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 section 702(c)(1)(A) or section 732(c)(1)(A) of the Act (whichever is applicable) (*see* § 351.203).

(2) For additional information concerning petitions, contact the Director for Policy and Analysis, Import Administration, International Trade Administration, Room 3093, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; (202) 482–1768.

(i) *Pre-initiation communications*—(1) *In general.* During the period before the Secretary's decision whether to initiate an investigation, the Secretary will not consider the filing of a notice of appearance to constitute a communication for purposes of section 702(b)(4)(B) or section 732(b)(3)(B) of the Act.

(2) *Consultations with foreign governments in countervailing duty proceedings.* In a countervailing duty proceeding, the Secretary will invite the government of any exporting country named in the petition for consultations with

respect to the petition. (The information collection requirements in paragraph (a) of this section have been approved by the Office of Management and Budget under control number 0625–0105.)

§ 351.203 Determination of sufficiency of petition.

(a) *Introduction.* When a petition is filed under § 351.202, the Secretary must determine that the petition satisfies the relevant statutory requirements before initiating an antidumping or countervailing duty investigation. This section sets forth rules regarding a determination as to the sufficiency of a petition (including the determination that a petition is supported by the domestic industry), the deadline for making the determination, and the actions to be taken once the Secretary has made the determination.

(b) *Determination of sufficiency*—(1) *In general.* Normally, not later than 20 days after a petition is filed, the Secretary, on the basis of sources readily available to the Secretary, will examine the accuracy and adequacy of the evidence provided in the petition and determine whether to initiate an investigation under section 702(c)(1)(A) or section 732(c)(1)(A) of the Act (whichever is applicable).

(2) *Extension where polling required.* If the Secretary is required to poll or otherwise determine support for the petition under section 702(c)(4)(D) or section 732(c)(4)(D) of the Act, the Secretary may, in exceptional circumstances, extend the 20-day period by the amount of time necessary to collect and analyze the required information. In no case will the period between the filing of a petition and the determination whether to initiate an investigation exceed 40 days.

(c) *Notice of initiation and distribution of petition*—(1) *Notice of initiation.* If the initiation determination of the Secretary under section 702(c)(1)(A) or section 732(c)(1)(A) of the Act is affirmative, the Secretary will initiate an investigation and publish in the FEDERAL REGISTER notice of ''Initiation of Antidumping (Countervailing Duty) Investigation.'' The Secretary will notify the Commission at the time of initiation of the investigation and will make available to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

(2) *Distribution of petition.* As soon as practicable after initiation of an investigation, the Secretary will provide a public version of the petition to all known exporters (including producers who sell for export to the United States) of the subject merchandise. If the Secretary determines that there is a particularly large number of exporters involved, instead of providing the public version to all known exporters, the Secretary may provide the public version to a trade association of the exporters or, alternatively, may consider the requirement of the preceding sentence to have been satisfied by the delivery of a public version of the petition to the government of the exporting country under § 351.202(f).

(d) *Insufficiency of petition.* If an initiation determination of the Secretary under section 702(c)(1)(A) or section 732(c)(1)(A) of the Act is negative, the Secretary will dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and publish in the FEDERAL REGISTER notice of ''Dismissal of Antidumping (Countervailing Duty) Petition.''

(e) *Determination of industry support.* In determining industry support for a petition under section 702(c)(4) or section 732(c)(4) of the Act, the following rules will apply:

(1) *Measuring production.* The Secretary normally will measure production over a twelve-month period specified by the Secretary, and may measure production based on either value or volume. Where a party to the proceeding establishes that production data for the relevant period, as specified by the Secretary, is unavailable, production levels may be established by reference to alternative data that the Secretary determines to be indicative of production levels.

(2) *Positions treated as business proprietary information.* Upon request, the Secretary may treat the position of a

domestic producer or workers regarding the petition and any production information supplied by the producer or workers as business proprietary information under § 351.105(c)(10).

(3) *Positions expressed by workers.* The Secretary will consider the positions of workers and management regarding the petition to be of equal weight. The Secretary will assign a single weight to the positions of both workers and management according to the production of the domestic like product of the firm in which the workers and management are employed. If the management of a firm expresses a position in direct opposition to the position of the workers in that firm, the Secretary will treat the production of that firm as representing neither support for, nor opposition to, the petition.

(4) *Certain positions disregarded.* (i) The Secretary will disregard the position of a domestic producer that opposes the petition if such producer is related to a foreign producer or to a foreign exporter under section 771(4)(B)(ii) of the Act, unless such domestic producer demonstrates to the Secretary's satisfaction that its interests as a domestic producer would be adversely affected by the imposition of an antidumping order or a countervailing duty order, as the case may be; and

(ii) The Secretary may disregard the position of a domestic producer that is an importer of the subject merchandise, or that is related to such an importer, under section 771(4)(B)(ii) of the Act.

(5) *Polling the industry.* In conducting a poll of the industry under section 702(c)(4)(D)(i) or section 732(c)(4)(D)(i) of the Act, the Secretary will include unions, groups of workers, and trade or business associations described in paragraphs (9)(D) and (9)(E) of section 771 of the Act.

(f) *Time limits where petition involves same merchandise as that covered by an order that has been revoked.* Under section 702(c)(1)(C) or section 732(c)(1)(C) of the Act, and in expediting an investigation involving subject merchandise for which a prior order was revoked or a suspended investigation was terminated, the Secretary will consider ''section 751(d)'' as including a predecessor provision.

§ 351.204 Time periods and persons examined; voluntary respondents; exclusions.

(a) *Introduction.* Because the Act does not specify the precise period of time that the Secretary should examine in an antidumping or countervailing duty investigation, this section sets forth rules regarding the period of investigation (''POI''). In addition, this section includes rules regarding the selection of persons to be examined, the treatment of voluntary respondents that are not selected for individual examination, and the exclusion of persons that the Secretary ultimately finds are not dumping or are not receiving countervailable subsidies.

(b) *Period of investigation*—(1) *Antidumping investigation.* In an antidumping investigation, the Secretary normally will examine merchandise sold during the four most recently completed fiscal quarters (or, in an investigation involving merchandise imported from a nonmarket economy country, the two most recently completed fiscal quarters) as of the month preceding the month in which the petition was filed or in which the Secretary self-initiated an investigation. However, the Secretary may examine merchandise sold during any additional or alternate period that the Secretary concludes is appropriate.

(2) *Countervailing duty investigation.* In a countervailing duty investigation, the Secretary normally will rely on information pertaining to the most recently completed fiscal year for the government and exporters or producers in question. If the exporters or producers have different fiscal years, the Secretary normally will rely on information pertaining to the most recently completed calendar year. If the investigation is conducted on an aggregate basis under section 777A(e)(2)(B) of the Act, the Secretary normally will rely on information pertaining to the most recently completed fiscal year for the government in question. However, the Secretary may rely on information for any additional or alternate period that the Secretary concludes is appropriate.

(c) *Exporters and producers examined*—(1) *In general.* In an investigation, the Secretary will attempt to determine an individual weighted-average dumping margin or individual countervailable subsidy rate for each known exporter or producer of the subject merchandise. However, the Secretary may decline to examine a particular exporter or producer if that exporter or producer and the petitioner agree.

(2) *Limited investigation.* Notwithstanding paragraph (c)(1) of this section, the Secretary may limit the investigation by using a method described in subsection (a), (c), or (e) of section 777A of the Act.

(d) *Voluntary respondents*—(1) *In general.* If the Secretary limits the number of exporters or producers to be individually examined under section 777A(c)(2) or section 777A(e)(2)(A) of the Act, the Secretary will examine voluntary respondents (exporters or producers, other than those initially selected for individual examination) in accordance with section 782(a) of the Act.

(2) *Acceptance of voluntary respondents.* The Secretary will determine, as soon as practicable, whether to examine a voluntary respondent individually. A voluntary respondent accepted for individual examination under subparagraph (d)(1) of this section will be subject to the same requirements as an exporter or producer initially selected by the Secretary for individual examination under section 777A(c)(2) or section 777A(e)(2)(A) of the Act, including the requirements of section 782(a) of the Act and, where applicable, the use of the facts available under section 776 of the Act and § 351.308.

(3) *Exclusion of voluntary respondents' rates from all-others rate.* In calculating an all-others rate under section 705(c)(5) or section 735(c)(5) of the Act, the Secretary will exclude weighted-average dumping margins or countervailable subsidy rates calculated for voluntary respondents.

(e) *Exclusions*—(1) *In general.* The Secretary will exclude from an affirmative final determination under section 705(a) or section 735(a) of the Act or an order under section 706(a) or section 736(a) of the Act, any exporter or producer for which the Secretary determines an individual weighted-average dumping margin or individual net countervailable subsidy rate of zero or *de minimis.*

(2) *Preliminary determinations.* In an affirmative preliminary determination under section 703(b) or section 733(b) of the Act, an exporter or producer for which the Secretary preliminarily determines an individual weighted-average dumping margin or individual net countervailable subsidy of zero or *de minimis* will not be excluded from the preliminary determination or the investigation. However, the exporter or producer will not be subject to provisional measures under section 703(d) or section 733(d) of the Act.

(3) *Exclusion of nonproducing exporter*—(i) *In general.* In the case of an exporter that is not the producer of subject merchandise, the Secretary normally will limit an exclusion of the exporter to subject merchandise of those producers that supplied the exporter during the period of investigation.

(ii) *Example.* During the period of investigation, Exporter A exports to the United States subject merchandise produced by Producer X. Based on an examination of Exporter A, the Secretary determines that the dumping margins with respect to these exports are *de minimis*, and the Secretary excludes Exporter A. Normally, the exclusion of Exporter A would be limited to subject merchandise produced by Producer X. If Exporter A began to export subject merchandise produced by Producer Y, this merchandise would be subject to the antidumping duty order, if any.

(4) *Countervailing duty investigations conducted on an aggregate basis and requests for exclusion from countervailing duty order.* Where the Secretary conducts a countervailing duty investigation on an aggregate basis under section 777A(e)(2)(B) of the Act, the Secretary will consider and investigate requests for exclusion to the extent practicable. An exporter or producer that desires exclusion from an order must submit:

(i) A certification by the exporter or producer that it received zero or *de minimis* net countervailable subsidies during the period of investigation;

(ii) If the exporter or producer received a countervailable subsidy, calculations demonstrating that the amount of net countervailable subsidies received was *de minimis* during the period of investigation;

(iii) If the exporter is not the producer of the subject merchandise, certifications from the suppliers and producers of the subject merchandise that those persons received zero or *de minimis* net countervailable subsidies during the period of the investigation; and

(iv) A certification from the government of the affected country that the government did not provide the exporter (or the exporter's supplier) or producer with more than *de minimis* net countervailable subsidies during the period of investigation.

§ 351.205 Preliminary determination.

(a) *Introduction.* A preliminary determination in an antidumping or countervailing duty investigation constitutes the first point at which the Secretary may provide a remedy if the Secretary preliminarily finds that dumping or countervailable subsidization has occurred. The remedy (sometimes referred to as ''provisional measures'') usually takes the form of a bonding requirement to ensure payment if antidumping or countervailing duties ultimately are imposed. Whether the Secretary's preliminary determination is affirmative or negative, the investigation continues. This section contains rules regarding deadlines for preliminary determinations, postponement of preliminary determinations, notices of preliminary determinations, and the effects of affirmative preliminary determinations.

(b) *Deadline for preliminary determination.* The deadline for a preliminary determination under section 703(b) or section 733(b) of the Act will be:

(1) Normally not later than 140 days in an antidumping investigation (65 days in a countervailing duty investigation) after the date on which the Secretary initiated the investigation (*see* section 703(b)(1) or section 733(b)(1)(A) of the Act);

(2) Not later than 190 days in an antidumping investigation (130 days in a countervailing duty investigation) after the date on which the Secretary initiated the investigation if the Secretary postpones the preliminary determination at petitioner's request or because the Secretary determines that the investigation is extraordinarily complicated (*see* section 703(c)(1) or section 733(c)(1) of the Act);

(3) In a countervailing duty investigation, not later than 250 days after the date on which the proceeding began if the Secretary postpones the preliminary determination due to an upstream subsidy allegation (up to 310 days if the Secretary also postponed the preliminary determination at the request of the petitioner or because the Secretary determined that the investigation is extraordinarily complicated) (*see* section 703(c)(1) and section 703(g)(1) of the Act);

(4) Within 90 days after initiation in an antidumping investigation, and on an expedited basis in a countervailing duty investigation, where verification has been waived (*see* section 703(b)(3) or section 733(b)(2) of the Act);

(5) In a countervailing duty investigation, on an expedited basis and within 65 days after the date on which the Secretary initiated the investigation if the sole subsidy alleged in the petition was the derogation of an international undertaking on official export credits (*see* section 702(b)(3) and section 703(b)(2) of the Act);

(6) In a countervailing duty investigation, not later than 60 days after the date on which the Secretary initiated the investigation if the only subsidy under investigation is a subsidy with respect to which the Secretary received notice from the United States Trade Representative of a violation of Article 8 of the Subsidies Agreement (*see* section 703(b)(5) of the Act); and

(7) In an antidumping investigation, within the deadlines set forth in section 733(b)(1)(B) of the Act if the investigation involves short life cycle merchandise (*see* section 733(b)(1)(B) and section 739 of the Act).

(c) *Contents of preliminary determination and publication of notice.* A preliminary determination will include a preliminary finding on critical circumstances, if appropriate, under section 703(e)(1) or section 733(e)(1) of the Act (whichever is applicable). The Secretary will publish in the FEDERAL

REGISTER notice of ''Affirmative (Negative) Preliminary Antidumping (Countervailing Duty) Determination,'' including the rates, if any, and an invitation for argument consistent with § 351.309.

(d) *Effect of affirmative preliminary determination.* If the preliminary determination is affirmative, the Secretary will take the actions described in section 703(d) or section 733(d) of the Act (whichever is applicable). In making information available to the Commission under section 703(d)(3) or section 733(d)(3) of the Act, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the preliminary determination and which the Commission may consider relevant to its injury determination.

(e) *Postponement at the request of the petitioner.* A petitioner must submit a request for postponement of the preliminary determination (*see* section 703(c)(1)(A) or section 733(c)(1)(A) of the Act) 25 days or more before the scheduled date of the preliminary determination, and must state the reasons for the request. The Secretary will grant the request, unless the Secretary finds compelling reasons to deny the request.

(f) *Notice of postponement.* (1) If the Secretary decides to postpone the preliminary determination at the request of the petitioner or because the investigation is extraordinarily complicated, the Secretary will notify all parties to the proceeding not later than 20 days before the scheduled date of the preliminary determination, and will publish in the FEDERAL REGISTER notice of ''Postponement of Preliminary Antidumping (Countervailing Duty) Determination,'' stating the reasons for the postponement (*see* section 703(c)(2) or section 733(c)(2) of the Act).

(2) If the Secretary decides to postpone the preliminary determination due to an allegation of upstream subsidies, the Secretary will notify all parties to the proceeding not later than the scheduled date of the preliminary determination and will publish in the FEDERAL REGISTER notice of ''Postponement of Preliminary Countervailing Duty Determination,'' stating the reasons for the postponement.

§ 351.206 Critical circumstances.

(a) *Introduction.* Generally, antidumping or countervailing duties are imposed on entries of merchandise made on or after the date on which the Secretary first imposes provisional measures (most often the date on which notice of an affirmative preliminary determination is published in the FEDERAL REGISTER). However, if the Secretary finds that ''critical circumstances'' exist, duties may be imposed retroactively on merchandise entered up to 90 days before the imposition of provisional measures. This section contains procedural and substantive rules regarding allegations and findings of critical circumstances.

(b) *In general.* If a petitioner submits to the Secretary a written allegation of critical circumstances, with reasonably available factual information supporting the allegation, 21 days or more before the scheduled date of the Secretary's final determination, or on the Secretary's own initiative in a self-initiated investigation, the Secretary will make a finding whether critical circumstances exist, as defined in section 705(a)(2) or section 735(a)(3) of the Act (whichever is applicable).

(c) *Preliminary finding.* (1) If the petitioner submits an allegation of critical circumstances 30 days or more before the scheduled date of the Secretary's final determination, 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 exist, as defined in section 703(e)(1) or section 733(e)(1) of the Act (whichever is applicable).

(2) The Secretary will issue the preliminary finding:

(i) Not later than the preliminary determination, if the allegation is submitted 20 days or more before the scheduled date of the preliminary determination; or

(ii) Within 30 days after the petitioner submits the allegation, if the allegation is submitted later than 20 days before the scheduled date of the preliminary determination; or

(iii) If, pursuant to paragraph (i) of this section, the period examined for purposes of determining whether critical circumstances exists is earlier than normal, the Secretary will issue the preliminary finding as early as possible after initiation of the investigation, but normally not less than 45 days after the petition was filed. The Secretary will notify the Commission and publish in the FEDERAL REGISTER notice of the preliminary finding.

(d) *Suspension of liquidation.* If the Secretary makes an affirmative preliminary finding of critical circumstances, the provisions of section 703(e)(2) or section 733(e)(2) of the Act (whichever is applicable) regarding the retroactive suspension of liquidation will apply.

(e) *Final finding.* For any allegation of critical circumstances submitted 21 days or more before the scheduled date of the Secretary's final determination, the Secretary will make a final finding on critical circumstances, and will take appropriate action under section 705(c)(4) or section 735(c)(4) of the Act (whichever is applicable).

(f) *Findings in self-initiated investigations.* In a self-initiated investigation, the Secretary will make preliminary and final findings on critical circumstances without regard to the time limits in paragraphs (c) and (e) of this section.

(g) *Information regarding critical circumstances.* The Secretary may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise if, at any time after the initiation of an investigation, the Secretary makes the findings described in section 702(e) or section 732(e) of the Act (whichever is applicable) regarding the possible existence of critical circumstances.

(h) *Massive imports.* (1) In determining whether imports of the subject merchandise have been massive under section 705(a)(2)(B) or section 735(a)(3)(B) of the Act, 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 ''relatively short period'' (*see* paragraph (i) 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.

(i) *Relatively short period.* Under section 705(a)(2)(B) or section 735(a)(3)(B) of the Act, the Secretary normally will consider a ''relatively short period'' as the period beginning on the date the proceeding begins and ending at least three months later. However, if the Secretary finds that importers, or exporters or producers, 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.

[62 FR 27379, May 19, 1997, as amended at 64 FR 48707, Sept. 8, 1999]

§ 351.207 Termination of investigation.

(a) *Introduction.* ''Termination'' is a term of art that refers to the end of an antidumping or countervailing duty proceeding in which an order has not yet been issued. The Act establishes a variety of mechanisms by which an investigation may be terminated, most of which are dealt with in this section. For rules regarding the termination of a suspended investigation following a review under section 751 of the Act, *see* § 351.222.

(b) *Withdrawal of petition; self-initiated investigations*—(1) *In general.* The Secretary may terminate an investigation under section 704(a)(1)(A) or section 734(a)(1)(A) (withdrawal of petition) or under section 704(k) or section 734(k) (self-initiated investigation) of the Act, provided that the Secretary concludes that termination is in the public interest. If the Secretary terminates an investigation, the Secretary will publish in the FEDERAL REGISTER notice of ''Termination of Antidumping (Countervailing Duty) Investigation,'' together with, when appropriate, a copy of any correspondence with the petitioner forming the basis of the withdrawal and the termination. (For the treatment in a subsequent investigation of records compiled in an investigation in which the petition was

withdrawn, *see* section 704(a)(1)(B) or section 734(a)(1)(B) of the Act.)

(2) *Withdrawal of petition based on acceptance of quantitative restriction agreements.* In addition to the requirements of paragraph (b)(1) of this section, if a termination is based on the acceptance of an understanding or other kind of agreement to limit the volume of imports into the United States of the subject merchandise, the Secretary will apply the provisions of section 704(a)(2) or section 734(a)(2) of the Act (whichever is applicable) regarding public interest and consultations with consuming industries and producers and workers.

(c) *Lack of interest.* The Secretary may terminate an investigation based upon lack of interest (*see* section 782(h)(1) of the Act). Where the Secretary terminates an investigation under this paragraph, the Secretary will publish the notice described in paragraph (b)(1) of this section.

(d) *Negative determination.* An investigation terminates automatically upon publication in the FEDERAL REGISTER of the Secretary's negative final determination or the Commission's negative preliminary or final determination.

(e) *End of suspension of liquidation.* When an investigation terminates, 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 referred to in paragraph (b) of this section or on the date of publication of a negative determination referred to in paragraph (d) of this section, and will instruct the Customs Service to release any cash deposit or bond.

§ 351.208 Suspension of investigation.

(a) *Introduction.* In addition to the imposition of duties, the Act also permits the Secretary to suspend an antidumping or countervailing duty investigation by accepting a suspension agreement (referred to in the WTO Agreements as an ''undertaking''). Briefly, in a suspension agreement, the exporters and producers or the foreign government agree to modify their behavior so as to eliminate dumping or subsidization or the injury caused thereby. If the Secretary accepts a suspension agreement, the Secretary will ''suspend'' the investigation and thereafter will monitor compliance with the agreement. This section contains rules for entering into suspension agreements and procedures for suspending an investigation.

(b) *In general.* The Secretary may suspend an investigation under section 704 or section 734 of the Act and this section.

(c) *Definition of ''substantially all.''* Under section 704 and section 734 of the Act, exporters that account for ''substantially all'' of the merchandise means exporters and producers that have accounted for not less than 85 percent by value or volume of the subject merchandise during the period for which the Secretary is measuring dumping or countervailable subsidization in the investigation or such other period that the Secretary considers representative.

(d) *Monitoring.* In monitoring a suspension agreement under section 704(c), section 734(c), or section 734(l) of the Act (agreements to eliminate injurious effects or to restrict the volume of imports), the Secretary will not be obliged to ascertain on a continuing basis the prices in the United States of the subject merchandise or of domestic like products.

(e) *Exports not to increase during interim period.* The Secretary will not accept a suspension agreement under section 704(b)(2) or section 734(b)(1) of the Act (the cessation of exports) unless the agreement ensures that the quantity of the subject 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.

(f) *Procedure for suspension of investigation*—(1) *Submission of proposed suspension agreement*—(i) *In general.* As appropriate, the exporters and producers or, in an antidumping investigation involving a nonmarket economy country or a countervailing duty investigation, the government, must submit to the Secretary a proposed suspension agreement within:

(A) In an antidumping investigation, 15 days after the date of issuance of the preliminary determination, or

(B) In a countervailing duty investigation, 7 days after the date of issuance of the preliminary determination.

(ii) *Postponement of final determination.* Where a proposed suspension agreement is submitted in an antidumping investigation, an exporter or producer or, in an investigation involving a nonmarket economy country, the government, may request postponement of the final determination under section 735(a)(2) of the Act (*see* § 351.210(e)). Where the final determination in a countervailing duty investigation is postponed under section 703(g)(2) or section 705(a)(1) of the Act (*see* § 351.210(b)(3) and § 351.210(i)), the time limits in paragraphs (f)(1)(i), (f)(2)(i), (f)(3), and (g)(1) of this section applicable to countervailing duty investigations will be extended to coincide with the time limits in such paragraphs applicable to antidumping investigations.

(iii) *Special rule for regional industry determination.* If the Commission makes a regional industry determination in its final affirmative determination under section 705(b) or section 735(b) of the Act but not in its preliminary affirmative determination under section 703(a) or section 733(a) of the Act, the exporters and producers or, in an antidumping investigation involving a nonmarket economy country or a countervailing duty investigation, the government, must submit to the Secretary any proposed suspension agreement within 15 days of the publication in the FEDERAL REGISTER of the antidumping or countervailing duty order.

(2) *Notification and consultation.* In fulfilling the requirements of section 704 or section 734 of the Act (whichever is applicable), the Secretary will take the following actions:

(i) *In general.* The Secretary will notify all parties to the proceeding of the proposed suspension of an investigation and provide to the petitioner a copy of the suspension agreement preliminarily accepted by the Secretary (the agreement must contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of section 704 or section 734 of the Act) within:

(A) In an antidumping investigation, 30 days after the date of issuance of the preliminary determination, or

(B) In a countervailing duty investigation, 15 days after the date of issuance of the preliminary determination; or

(ii) *Special rule for regional industry determination.* If the Commission makes a regional industry determination in its final affirmative determination under section 705(b) or section 735(b) of the Act but not in its preliminary affirmative determination under section 703(a) or section 733(a) of the Act, the Secretary, within 15 days of the submission of a proposed suspension agreement under paragraph (f)(1)(iii) of this section, will notify all parties to the proceeding of the proposed suspension agreement and provide to the petitioner a copy of the agreement preliminarily accepted by the Secretary (such agreement must contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of section 704 or section 734 of the Act); and

(iii) *Consultation.* The Secretary will consult with the petitioner concerning the proposed suspension of the investigation.

(3) *Opportunity for comment.* The Secretary will provide all interested parties, an industrial user of the subject merchandise or a representative consumer organization, as described in section 777(h) of the Act, and United States government agencies an opportunity to submit written argument and factual information concerning the proposed suspension of the investigation within:

(i) In an antidumping investigation, 50 days after the date of issuance of the preliminary determination,

(ii) In a countervailing duty investigation, 35 days after the date of issuance of the preliminary determination, or

(iii) In a regional industry case described in paragraph (f)(1)(iii) of this section, 35 days after the date of issuance of an order.

(g) *Acceptance of suspension agreement.* (1) The Secretary may accept an agreement to suspend an investigation within:

(i) In an antidumping investigation, 60 days after the date of issuance of the preliminary determination,

(ii) In a countervailing duty investigation, 45 days after the date of issuance of the preliminary determination, or

(iii) In a regional industry case described in paragraph (f)(1)(iii) of this section, 45 days after the date of issuance of an order.

(2) If the Secretary accepts an agreement to suspend an investigation, the Secretary will take the actions described in section 704(f), section 704(m)(3), section 734(f), or section 734(l)(3) of the Act (whichever is applicable), and will publish in the FEDERAL REGISTER notice of ''Suspension of Antidumping (Countervailing Duty) Investigation,'' including the text of the agreement. If the Secretary has not already published notice of an 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.

(h) *Continuation of investigation.* (1) A request to the Secretary under section 704(g) or section 734(g) of the Act for the continuation of the investigation must be made in writing. In addition, the request must be simultaneously filed with the Commission, and the requester must so certify in submitting the request to the Secretary.

(2) If the Secretary and the Commission make affirmative final determinations in an investigation that has been continued, the suspension agreement will remain in effect in accordance with the factual and legal conclusions in the Secretary's final determination. If either the Secretary or the Commission makes a negative final determination, the agreement will have no force or effect.

(i) *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 subject merchandise in excess of any quantity allowed by a suspension agreement under section 704 or section 734 of the Act, including any quantity allowed during the interim period (*see* paragraph (e) of this section).

(2) Imports in excess of the quantity allowed by a suspension agreement, including any quantity allowed during the interim period (*see* paragraph (e) of this section), may be exported or destroyed under Customs Service supervision, except that if the agreement is under section 704(c)(3) or section 734(l) of the Act (restrictions on the volume of imports), the excess merchandise, with the approval of the Secretary, may be held for future opening under the agreement by placing it in a foreign trade zone or by entering it for warehouse.

§ 351.209 Violation of suspension agreement.

(a) *Introduction.* A suspension agreement remains in effect until the underlying investigation is terminated (*see* §§ 351.207 and 351.222). However, if the Secretary finds that a suspension agreement has been violated or no longer meets the requirements of the Act, the Secretary may either cancel or revise the agreement. This section contains rules regarding cancellation and revision of suspension agreements.

(b) *Immediate determination.* If the Secretary determines that a signatory has violated a suspension agreement, the Secretary, without providing interested parties an opportunity to comment, will:

(1) Order the suspension of liquidation in accordance with section 704(i)(1)(A) or section 734(i)(1)(A) of the Act (whichever is applicable) of all entries of the subject 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 the 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 section 704(g) or section

734(g) of the Act, resume the investigation as if the Secretary had 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 subject merchandise suspended under paragraph (b)(1) of this section a cash deposit or bond at the rates determined in the affirmative preliminary determination;

(3) If the investigation was completed under section 704(g) or section 734(g) of the Act, issue an antidumping order or countervailing duty order (whichever is applicable) and, for all entries subject to suspension of liquidation under paragraph (b)(1) of this section, instruct the Customs Service to require for each entry of the merchandise suspended under this paragraph a cash deposit at the rates 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 (Countervailing Duty) Order (Resumption of Antidumping (Countervailing Duty) Investigation); Cancellation of Suspension Agreement.''

(c) *Determination after notice and comment.* (1) If the Secretary has reason to believe that a signatory has violated a suspension agreement, or that an agreement no longer meets the requirements of section 704(d)(1) or section 734(d) of the Act, but the Secretary does not have sufficient information to determine that a signatory has violated the agreement (*see* paragraph (b) of this section), the Secretary will publish in the FEDERAL REGISTER notice of ''Invitation for Comment on Antidumping (Countervailing Duty) Suspension Agreement.''

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

(i) Determine whether any signatory has violated the suspension agreement; or

(ii) Determine whether the suspension agreement no longer meets the requirements of section 704(d)(1) or section 734(d) of the Act.

(3) If the Secretary determines that a signatory has violated the suspension agreement, the Secretary will take appropriate action as described in paragraphs (b)(1) through (b)(5) of this section.

(4) If the Secretary determines that a suspension agreement no longer meets the requirements of section 704(d)(1) or section 734(d) of the Act, the Secretary will:

(i) Take appropriate action as described in paragraphs (b)(1) through (b)(5) of this section; except that, under paragraph (b)(1)(ii) of this section, the Secretary will order the suspension of liquidation of all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of:

(A) 90 days before the date of publication of the notice of suspension of liquidation; or

(B) 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;

(ii) Continue the suspension of investigation by accepting a revised suspension agreement under section 704(b) or section 734(b) of the Act (whether or not the Secretary accepted the original agreement under such section) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) or section 734(d) of the Act, and publish in the FEDERAL REGISTER notice of ''Revision of Agreement Suspending Antidumping (Countervailing Duty) Investigation''; or

(iii) Continue the suspension of investigation by accepting a revised suspension agreement under section 704(c), section 734(c), or section 734(l) of the Act (whether or not the Secretary accepted the original agreement under such section) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) or section 734(d) of the Act, and publish in the FEDERAL REGISTER notice of ''Revision of Agreement Suspending Antidumping (Countervailing Duty) Investigation.'' If the

Secretary continues to suspend an investigation based on a revised agreement accepted under section 704(c), section 734(c), or section 734(l) of the Act, the Secretary will order suspension of liquidation to begin. The suspension will not end until the Commission completes any requested review of the revised agreement under section 704(h) or 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 704(h) or section 734(h) of the Act, the provisions of sections 704(h)(2) and (3) and sections 734(h)(2) and (3) of the Act will apply.

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

(d) *Additional signatories.* If the Secretary decides that a suspension agreement no longer will completely eliminate the injurious effect of exports to the United States of subject merchandise under section 704(c)(1) or section 734(c)(1) of the Act, or that the signatory exporters no longer account for substantially all of the subject merchandise, the Secretary may revise the agreement to include additional signatory exporters.

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

§ 351.210 Final determination.

(a) *Introduction.* A ''final determination'' in an antidumping or countervailing duty investigation constitutes a final decision by the Secretary as to whether dumping or countervailable subsidization is occurring. If the Secretary's final determination is affirmative, in most instances the Commission will issue a final injury determination (except in certain countervailing duty investigations). Also, if the Secretary's preliminary determination was negative but the final determination is affirmative, the Secretary will impose provisional measures. If the Secretary's final determination is negative, the proceeding, including the injury investigation conducted by the Commission, terminates. This section contains rules regarding deadlines for, and postponement of, final determinations, contents of final determinations, and the effects of final determinations.

(b) *Deadline for final determination.* The deadline for a final determination under section 705(a)(1) or section 735(a)(1) of the Act will be:

(1) Normally, not later than 75 days after the date of the Secretary's preliminary determination (*see* section 705(a)(1) or section 735(a)(1) of the Act);

(2) In an antidumping investigation, not later than 135 days after the date of publication of the preliminary determination if the Secretary postpones the final determination at the request of:

(i) The petitioner, if the preliminary determination was negative (*see* section 735(a)(2)(B) of the Act); or

(ii) Exporters or producers who account for a significant proportion of exports of the subject merchandise, if the preliminary determination was affirmative (*see* section 735(a)(2)(A) of the Act);

(3) In a countervailing duty investigation, not later than 165 days after the preliminary determination, if, after the preliminary determination, the Secretary decides to investigate an upstream subsidy allegation and concludes that additional time is needed to investigate the allegation (*see* section 703(g)(2) of the Act); or

(4) In a countervailing duty investigation, the same date as the date of the final antidumping determination, if:

(i) In a situation where the Secretary simultaneously initiated antidumping and countervailing duty investigations on the subject merchandise (from the

same or other countries), the petitioner requests that the final countervailing duty determination be postponed to the date of the final antidumping determination; and

(ii) If the final countervailing duty determination is not due on a later date because of postponement due to an allegation of upstream subsidies under section 703(g) of the Act (*see* section 705(a)(1) of the Act).

(c) *Contents of final determination and publication of notice.* The final determination will include, if appropriate, a final finding on critical circumstances under section 705(a)(2) or section 735(a)(3) of the Act (whichever is applicable). The Secretary will publish in the FEDERAL REGISTER notice of ''Affirmative (Negative) Final Antidumping (Countervailing Duty) Determination,'' including the rates, if any.

(d) *Effect of affirmative final determination.* If the final determination is affirmative, the Secretary will take the actions described in section 705(c)(1) or section 735(c)(1) of the Act (whichever is applicable). In addition, in the case of a countervailing duty investigation involving subject merchandise from a country that is not a Subsidies Agreement country, the Secretary will instruct the Customs Service to require a cash deposit, as provided in section 706(a)(3) of the Act, for each entry of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the order under section 706(a) of the Act.

(e) *Request for postponement of final antidumping determination*—(1) *In general.* A request to postpone a final antidumping determination under section 735(a)(2) of the Act (*see* paragraph (b)(2) of this section) must be submitted in writing within the scheduled date of the final determination. The Secretary may grant the request, unless the Secretary finds compelling reasons to deny the request.

(2) *Requests by exporters.* In the case of a request submitted under paragraph (e)(1) of this section by exporters who account for a significant proportion of exports of subject merchandise (*see* section 735(a)(2)(A) of the Act), the Secretary will not grant the request unless those exporters also submit a request described in the last sentence of section 733(d) of the Act (extension of provisional measures from a 4-month period to not more than 6 months).

(f) *Deferral of decision concerning upstream subsidization to review.* Notwithstanding paragraph (b)(3) of this section, if the petitioner so requests in writing and the preliminary countervailing duty determination was affirmative, the Secretary, instead of postponing the final determination, may defer a decision concerning upstream subsidization until the conclusion of the first administrative review of a countervailing duty order, if any (*see* section 703(g)(2)(B)(i) of the Act).

(g) *Notification of postponement.* If the Secretary postpones a final determination under paragraph (b)(2), (b)(3), or (b)(4) of this section, the Secretary will notify promptly all parties to the proceeding of the postponement, and will publish in the FEDERAL REGISTER notice of ''Postponement of Final Antidumping (Countervailing Duty) Determination,'' stating the reasons for the postponement.

(h) *Termination of suspension of liquidation in a countervailing duty investigation.* If the Secretary postpones a final countervailing duty determination, the Secretary will 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 will not resume it unless and until the Secretary publishes a countervailing duty order.

(i) *Postponement of final countervailing duty determination for simultaneous investigations.* A request by the petitioner to postpone a final countervailing duty determination to the date of the final antidumping determination must be submitted in writing within five days of the date of publication of the preliminary countervailing duty determination (*see* section 705(a)(1) and paragraph (b)(4) of this section).

(j) *Commission access to information.* If the final determination is affirmative, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the final determination and that the Commission

may consider relevant to its injury determination (*see* section 705(c)(1)(A) or section 735(c)(1)(A) of the Act).

(k) *Effect of negative final determination.* An investigation terminates upon publication in the FEDERAL REGISTER of the Secretary's or the Commission's negative final determination, and the Secretary will take the relevant actions described in section 705(c)(2) or section 735(c)(2) of the Act (whichever is applicable).

§ 351.211 Antidumping order and countervailing duty order.

(a) *Introduction.* The Secretary issues an order when both the Secretary and the Commission (except in certain countervailing duty investigations) have made final affirmative determinations. The issuance of an order ends the investigative phase of a proceeding. Generally, upon the issuance of an order, importers no longer may post bonds as security for antidumping or countervailing duties, but instead must make a cash deposit of estimated duties. An order remains in effect until it is revoked. This section contains rules regarding the issuance of orders in general, as well as special rules for orders where the Commission has found a regional industry to exist.

(b) *In general.* Not later than seven days after receipt of notice of an affirmative final injury determination by the Commission under section 705(b) or section 735(b) of the Act, or, in a countervailing duty proceeding involving subject merchandise from a country not entitled to an injury test (*see* § 351.101(b)), simultaneously with publication of an affirmative final countervailing duty determination by the Secretary, the Secretary will publish in the FEDERAL REGISTER an ''Antidumping Order'' or ''Countervailing Duty Order'' that:

(1) Instructs the Customs Service to assess antidumping duties or countervailing duties (whichever is applicable) on the subject merchandise, in accordance with the Secretary's instructions at the completion of each review requested under § 351.213(b) (administrative review), § 351.214(b) (new shipper review), or § 351.215(b) (expedited antidumping review), or if a review is not requested, in accordance with the Secretary's assessment instructions under § 351.212(c);

(2) Instructs the Customs Service to require a cash deposit of estimated antidumping or countervailing duties at the rates included in the Secretary's final determination; and

(3) Orders the suspension of liquidation ended for all entries of the subject 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 section 703(d)(2) or section 733(d)(2) of the Act, it would have found material injury (*see* section 706(b) or section 736(b) of the Act).

§ 351.212 Assessment of antidumping and countervailing duties; provisional measures deposit cap; interest on certain overpayments and underpayments.

(a) *Introduction.* Unlike the systems of some other countries, the United States uses a ''retrospective'' assessment system under which final liability for antidumping and countervailing duties is determined after merchandise is imported. Generally, the amount of duties to be assessed is determined in a review of the order covering a discrete period of time. If a review is not requested, duties are assessed at the rate established in the completed review covering the most recent prior period or, if no review has been completed, the cash deposit rate applicable at the time merchandise was entered. This section contains rules regarding the assessment of duties, the provisional measures deposit cap, and interest on over- or undercollections of estimated duties.

(b) *Assessment of antidumping and countervailing duties as the result of a review*—(1) *Antidumping duties.* If the Secretary has conducted a review of an antidumping order under § 351.213 (administrative review), § 351.214 (new shipper review), or § 351.215 (expedited

antidumping review), the Secretary normally will calculate an assessment rate for each importer of subject merchandise covered by the review. The Secretary normally will calculate the assessment rate by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise for normal customs duty purposes. The Secretary then will instruct the Customs Service to assess antidumping duties by applying the assessment rate to the entered value of the merchandise.

(2) *Countervailing duties.* If the Secretary has conducted a review of a countervailing duty order under § 351.213 (administrative review) or § 351.214 (new shipper review), the Secretary normally will instruct the Customs Service to assess countervailing duties by applying the rates included in the final results of the review to the entered value of the merchandise.

(c) *Automatic assessment of antidumping and countervailing duties if no review is requested.* (1) If the Secretary does not receive a timely request for an administrative review of an order (*see* paragraph (b)(1), (b)(2), or (b)(3) of § 351.213), the Secretary, without additional notice, will instruct the Customs Service to:

(i) Assess antidumping duties or countervailing duties, as the case may be, on the subject merchandise described in § 351.213(e) at rates equal to the cash deposit of, or bond for, estimated antidumping duties or countervailing duties required on that merchandise at the time of entry, or withdrawal from warehouse, for consumption; and

(ii) To continue to collect the cash deposits previously ordered.

(2) If the Secretary receives a timely request for an administrative review of an order (*see* paragraph (b)(1), (b)(2), or (b)(3) of § 351.213), the Secretary will instruct the Customs Service to assess antidumping duties or countervailing duties, and to continue to collect cash deposits, on the merchandise not covered by the request in accordance with paragraph (c)(1) of this section.

(3) The automatic assessment provisions of paragraphs (c)(1) and (c)(2) of this section will not apply to subject merchandise that is the subject of a new shipper review (*see* § 351.214) or an expedited antidumping review (*see* § 351.215).

(d) *Provisional measures deposit cap.* This paragraph applies to subject merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission's notice of an affirmative final injury determination or, in a countervailing duty proceeding that involves merchandise from a country that is not entitled to an injury test, the date of the Secretary's notice of an affirmative final countervailing duty determination. If the amount of duties that would be assessed by applying the rates included in the Secretary's affirmative preliminary or affirmative final antidumping or countervailing duty determination (''provisional duties'') is different from the amount of duties that would be assessed by applying the assessment rate under paragraphs (b)(1) and (b)(2) of this section (''final duties''), the Secretary will instruct the Customs Service to disregard the difference to the extent that the provisional duties are less than the final duties, and to assess antidumping or countervailing duties at the assessment rate if the provisional duties exceed the final duties.

(e) *Interest on certain overpayments and underpayments.* Under section 778 of the Act, the Secretary will instruct the Customs Service to calculate interest for each entry on or after the publication of the order from the date that a cash deposit is required to be deposited for the entry through the date of liquidation of the entry.

(f) *Special rule for regional industry cases*—(1) *In general.* If the Commission, in its final injury determination, found a regional industry under section 771(4)(C) of the Act, the Secretary may direct that duties not be assessed on subject merchandise of a particular exporter or producer if the Secretary determines that:

(i) The exporter or producer did not export subject merchandise for sale in the region concerned during or after the Department's period of investigation;

(ii) The exporter or producer has certified that it will not export subject

merchandise for sale in the region concerned in the future so long as the antidumping or countervailing duty order is in effect; and

(iii) No subject merchandise of the exporter or producer was entered into the United States outside of the region and then sold into the region during or after the Department's period of investigation.

(2) *Procedures for obtaining an exception from the assessment of duties*—(i) *Request for exception.* An exporter or producer seeking an exception from the assessment of duties under paragraph (f)(1) of this section must request, subject to the provisions of §351.213 or §351.214, an administrative review or a new shipper review to determine whether subject merchandise of the exporter or producer in question should be excepted from the assessment of duties under paragraph (f)(1) of this section. The exporter or producer making the request may request that the review be limited to a determination as to whether the requirements of paragraph (f)(1) of this section are satisfied. The request for a review must be accompanied by:

(A) A certification by the exporter or producer that it did not export subject merchandise for sale in the region concerned during or after the Department's period of investigation, and that it will not do so in the future so long as the antidumping or countervailing duty order is in effect; and

(B) A certification from each of the exporter's or producer's U.S. importers of the subject merchandise that no subject merchandise of that exporter or producer was entered into the United States outside such region and then sold into the region during or after the Department's period of investigation.

(ii) *Limited review.* If the Secretary initiates an administrative review or a new shipper review based on a request for review that includes a request for an exception from the assessment of duties under paragraph (f)(2)(i) of this section, the Secretary, if requested, may limit the review to a determination as to whether an exception from the assessment of duties should be granted under paragraph (f)(1) of this section.

(3) *Exception granted.* If, in the final results of the administrative review or the new shipper review, the Secretary determines that the requirements of paragraph (f)(1) of this section are satisfied, the Secretary will instruct the Customs Service to liquidate, without regard to antidumping or countervailing duties (whichever is appropriate), entries of subject merchandise of the exporter or producer concerned.

(4) *Exception not granted.* If, in the final results of the administrative review or the new shipper review, the Secretary determines that the requirements of paragraph (f)(1) are not satisfied, the Secretary:

(i) Will issue assessment instructions to the Customs Service in accordance with paragraph (b) of this section; or

(ii) If the review was limited to a determination as to whether an exception from the assessment of duties should be granted, the Secretary will instruct the Customs Service to assess duties in accordance with paragraph (f)(1) or (f)(2) of this section, whichever is appropriate (automatic assessment if no review is requested).

§351.213 Administrative review of orders and suspension agreements under section 751(a)(1) of the Act.

(a) *Introduction.* As noted in §351.212(a), the United States has a ''retrospective'' assessment system under which final liability for antidumping and countervailing duties is determined after merchandise is imported. Although duty liability may be determined in the context of other types of reviews, the most frequently used procedure for determining final duty liability is the administrative review procedure under section 751(a)(1) of the Act. This section contains rules regarding requests for administrative reviews and the conduct of such reviews.

(b) *Request for administrative review.* (1) Each year during the anniversary month of the publication of an antidumping or countervailing duty order, a domestic interested party or an interested party described in section 771(9)(B) of the Act (foreign government) may request in writing that the Secretary conduct an administrative review under section 751(a)(1) of the

Act of specified individual exporters or producers covered by an order (except for a countervailing duty order in which the investigation or prior administrative review was conducted on an aggregate basis), if the requesting person states why the person desires the Secretary to review those particular exporters or producers.

(2) During the same month, an exporter or producer covered by an order (except for a countervailing duty order in which the investigation or prior administrative review was conducted on an aggregate basis) 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 an exporter or producer (except for a countervailing duty order in which the investigation or prior administrative review was conducted on an aggregate basis) of the subject merchandise imported by that importer.

(4) Each year during the anniversary month of the publication of a suspension of investigation, an interested party may request in writing that the Secretary conduct an administrative review of all producers or exporters covered by an agreement on which the suspension of investigation was based.

(c) *Deferral of administrative review*—(1) *In general.* The Secretary may defer the initiation of an administrative review, in whole or in part, for one year if:

(i) The request for administrative review is accompanied by a request that the Secretary defer the review, in whole or in part; and

(ii) None of the following persons objects to the deferral: the exporter or producer for which deferral is requested, an importer of subject merchandise of that exporter or producer, a domestic interested party and, in a countervailing duty proceeding, the foreign government.

(2) *Timeliness of objection to deferral.* An objection to a deferral of the initiation of administrative review under paragraph (c)(1)(ii) of this section must be submitted within 15 days after the end of the anniversary month in which the administrative review is requested.

(3) *Procedures and deadlines.* If the Secretary defers the initiation of an administrative review, the Secretary will publish notice of the deferral in the FEDERAL REGISTER. The Secretary will initiate the administrative review in the month immediately following the next anniversary month, and the deadline for issuing preliminary results of review (*see* paragraph (h)(1) of this section) and submitting factual information (*see* § 351.302(b)(2)) will run from the last day of the next anniversary month.

(d) *Rescission of administrative review*—(1) *Withdrawal of request for review.* The Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of 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.

(2) *Self-initiated review.* The Secretary may rescind an administrative review that was self-initiated by the Secretary.

(3) *No shipments.* The Secretary may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be.

(4) *Notice of rescission.* If the Secretary rescinds an administrative review (in whole or in part), the Secretary will publish in the FEDERAL REGISTER notice of ''Rescission of Antidumping (Countervailing Duty) Administrative Review'' or, if appropriate, ''Partial Rescission of Antidumping (Countervailing Duty) Administrative Review.''

(e) *Period of review*—(1) *Antidumping proceedings.* (i) Except as provided in paragraph (e)(1)(ii) of this section, an administrative review under this section normally will cover, as appropriate, entries, exports, or sales of the subject merchandise during the 12 months immediately preceding the most recent anniversary month.

(ii) For requests received during the first anniversary month after publication of an order or suspension of investigation, an administrative review under 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.

(2) *Countervailing duty proceedings.* (i) Except as provided in paragraph (e)(2)(ii) of this section, an administrative review under this section normally will cover entries or exports of the subject merchandise during the most recently completed calendar year. If the review is conducted on an aggregate basis, the Secretary normally will cover entries or exports of the subject merchandise during the most recently completed fiscal year for the government in question.

(ii) For requests received during the first anniversary month after publication of an order or suspension of investigation, an administrative review under 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 calendar or fiscal year as described in paragraph (e)(2)(i) of this section.

(f) *Voluntary respondents.* In an administrative review, the Secretary will examine voluntary respondents in accordance with section 782(a) of the Act and § 351.204(d).

(g) *Procedures.* The Secretary will conduct an administrative review under this section in accordance with § 351.221.

(h) *Time limits*—(1) *In general.* The Secretary will issue preliminary results of review (*see* § 351.221(b)(4)) within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and final results of review (*see* § 351.221(b)(5)) within 120 days after the date on which notice of the preliminary results was published in the FEDERAL REGISTER.

(2) *Exception.* If the Secretary determines that it is not practicable to complete the review within the time specified in paragraph (h)(1) of this section, the Secretary may extend the 245-day period to 365 days and may extend the 120-day period to 180 days. If the Secretary does not extend the time for issuing preliminary results, the Secretary may extend the time for issuing final results from 120 days to 300 days.

(i) *Possible cancellation or revision of suspension agreement.* If during an administrative review the Secretary determines or has reason to believe that a signatory has violated a suspension agreement or that the agreement no longer meets the requirements of section 704 or section 734 of the Act (whichever is applicable), the Secretary will take appropriate action under section 704(i) or section 734(i) of the Act and § 351.209. The Secretary may suspend the time limit in paragraph (h) of this section while taking action under § 351.209.

(j) *Absorption of antidumping duties.* (1) During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping order under § 351.211, or a determination under § 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

(2) For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998.

(3) In determining under paragraph (j)(1) of this section whether antidumping duties have been absorbed, the Secretary will examine the antidumping duties calculated in the administrative review in which the absorption inquiry is requested.

(4) The Secretary will notify the Commission of the Secretary's determination if:

(i) In the case of an administrative review other than one to which paragraph (j)(2) of this section applies, the administrative review covers all or part of a time period falling between the third and fourth anniversary month of an order; or

(ii) In the case of an administrative review to which paragraph (j)(2) of this section applies, the Secretary initiated the administrative review in 1998.

(k) *Administrative reviews of countervailing duty orders conducted on an aggregate basis*—(1) *Request for zero rate.* Where the Secretary conducts an administrative review of a countervailing duty on an aggregate basis under section 777A(e)(2)(B) of the Act, the Secretary will consider and review requests for individual assessment and cash deposit rates of zero to the extent practicable. An exporter or producer that desires a zero rate must submit:

(i) A certification by the exporter or producer that it received zero or *de minimis* net countervailable subsidies during the period of review;

(ii) If the exporter or producer received a countervailable subsidy, calculations demonstrating that the amount of net countervailable subsidies received was *de minimis* during the period of review;

(iii) If the exporter is not the producer of the subject merchandise, certifications from the suppliers and producers of the subject merchandise that those persons received zero or *de minimis* net countervailable subsidies during the period of the review; and

(iv) A certification from the government of the affected country that the government did not provide the exporter (or the exporter's supplier) or producer with more than *de minimis* net countervailable subsidies during the period of review.

(2) *Application of country-wide subsidy rate.* With the exception of assessment and cash deposit rates of zero determined under paragraph (k)(1) of this section, if, in the final results of an administrative review under this section of a countervailing duty order, the Secretary calculates a single country-wide subsidy rate under section 777A(e)(2)(B) of the Act, that rate will supersede, for cash deposit purposes, all rates previously determined in the countervailing duty proceeding in question.

(l) *Exception from assessment in regional industry cases.* For procedures relating to a request for the exception from the assessment of antidumping or countervailing duties in a regional industry case, see § 351.212(f).

§ 351.214 New shipper reviews under section 751(a)(2)(B) of the Act.

(a) *Introduction.* The URAA established a new procedure by which so-called ''new shippers'' can obtain their own individual dumping margin or countervailable subsidy rate on an expedited basis. In general, a new shipper is an exporter or producer that did not export, and is not affiliated with an exporter or producer that did export, to the United States during the period of investigation. This section contains rules regarding requests for new shipper reviews and procedures for conducting such reviews. In addition, this section contains rules regarding requests for expedited reviews by non-investigated exporters in certain countervailing duty proceedings and procedures for conducting such reviews.

(b) *Request for new shipper review*—(1) *Requirement of sale or export.* Subject to the requirements of section 751(a)(2)(B) of the Act and this section, an exporter or producer may request a new shipper review if it has exported, or sold for export, subject merchandise to the United States.

(2) *Contents of request.* A request for a new shipper review must contain the following:

(i) If the person requesting the review is both the exporter and producer of the merchandise, a certification that the person requesting the review did not export subject merchandise to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation;

(ii) If the person requesting the review is the exporter, but not the producer, of the subject merchandise:

(A) The certification described in paragraph (b)(2)(i) of this section; and

(B) A certification from the person that produced or supplied the subject merchandise to the person requesting the review that that producer or supplier did not export the subject merchandise to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation;

(iii)(A) A certification that, since the investigation was initiated, such exporter or producer has never been affiliated with any exporter or producer who exported the subject merchandise to the United States (or in the case of a regional industry, who exported the subject merchandise for sale in the region concerned) during the period of investigation, including those not individually examined during the investigation;

(B) In an antidumping proceeding involving imports from a nonmarket economy country, a certification that the export activities of such exporter or producer are not controlled by the central government;

(iv) Documentation establishing:

(A) 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 establish the date of first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States;

(B) The volume of that and subsequent shipments; and

(C) The date of the first sale to an unaffiliated customer in the United States; and

(v) In the case of a review of a countervailing duty order, a certification that the exporter or producer has informed the government of the exporting country that the government will be required to provide a full response to the Department's questionnaire.

(c) *Deadline for requesting review.* An exporter or producer may request a new shipper review within one year of the date referred to in paragraph (b)(2)(iv)(A) of this section.

(d) *Time for new shipper review*—(1) *In general.* The Secretary will initiate a new shipper review under this section in the calendar month immediately following the anniversary month or the semiannual anniversary month if the request for the review is made during the 6-month period ending with the end of the anniversary month or the semiannual anniversary month (whichever is applicable).

(2) *Semiannual anniversary month.* The semiannual anniversary month is the calendar month which is 6 months after the anniversary month.

(3) *Example.* An order is published in January. The anniversary month would be January, and the semiannual anniversary month would be July. If the Secretary received a request for a new shipper review at any time during the period February-July, the Secretary would initiate a new shipper review in August. If the Secretary received a request for a new shipper review at any time during the period August-January, the Secretary would initiate a new shipper review in February.

(e) *Suspension of liquidation; posting bond or security.* When the Secretary initiates a new shipper review under this section, the Secretary will direct the Customs Service to suspend liquidation of any unliquidated entries of the subject merchandise from the relevant exporter or producer, and 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 subject merchandise.

(f) *Rescission of new shipper review*—(1) *Withdrawal of request for review.* The Secretary may rescind a new shipper review under this section, in whole or in part, if a party that requested a review withdraws its request not later than 60 days after the date of publication of notice of initiation of the requested review.

(2) *Absence of entry and sale to an unaffiliated customer.* The Secretary may rescind a new shipper review, in whole or in part, if the Secretary concludes that:

(i) As of the end of the normal period of review referred to in paragraph (g) of this section, there has not been an entry and sale to an unaffiliated customer in the United States of subject merchandise; and

(ii) An expansion of the normal period of review to include an entry and sale to an unaffiliated customer in the United States of subject merchandise would be likely to prevent the completion of the review within the time limits set forth in paragraph (i) of this section.

(3) *Notice of Rescission.* If the Secretary rescinds a new shipper review (in whole or in part), the Secretary will publish in the FEDERAL REGISTER notice of ''Rescission of Antidumping (Countervailing Duty) New Shipper Review'' or, if appropriate, ''Partial Rescission of Antidumping (Countervailing Duty) New Shipper Review.''

(g) *Period of review*—(1) *Antidumping proceeding*—(i) *In general.* Except as provided in paragraph (g)(1)(ii) of this section, in an antidumping proceeding, a new shipper review under this section normally will cover, as appropriate, entries, exports, or sales during the following time periods:

(A) If the new shipper review was initiated in the month immediately following the anniversary month, the twelve-month period immediately preceding the anniversary month; or

(B) If the new shipper review was initiated in the month immediately following the semiannual anniversary month, the period of review will be the six-month period immediately preceding the semiannual anniversary month.

(ii) *Exceptions.* (A) If the Secretary initiates a new shipper review under this section in the month immediately following the first anniversary month, the review normally will cover, as appropriate, entries, exports, or sales during the period from the date of suspension of liquidation under this part to the end of the month immediately preceding the first anniversary month.

(B) If the Secretary initiates a new shipper review under this section in the month immediately following the first semiannual anniversary month, the review normally will cover, as appropriate, entries, exports, or sales during the period from the date of suspension of liquidation under this part to the end of the month immediately preceding the first semiannual anniversary month.

(2) *Countervailing duty proceeding.* In a countervailing duty proceeding, the period of review for a new shipper review under this section will be the same period as that specified in § 351.213(e)(2) for an administrative review.

(h) *Procedures.* The Secretary will conduct a new shipper review under this section in accordance with § 351.221.

(i) *Time limits*—(1) *In general.* Unless the time limit is waived under paragraph (j)(3) of this section, the Secretary will issue preliminary results of review (*see* § 351.221(b)(4)) within 180 days after the date on which the new shipper review was initiated, and final results of review (*see* § 351.221(b)(5)) within 90 days after the date on which the preliminary results were issued.

(2) *Exception.* If the Secretary concludes that a new shipper review is extraordinarily complicated, the Secretary may extend the 180-day period to 300 days, and may extend the 90-day period to 150 days.

(j) *Multiple reviews.* Notwithstanding any other provision of this subpart, if a review (or a request for a review) under § 351.213 (administrative review), § 351.214 (new shipper review), § 351.215 (expedited antidumping review), or § 351.216 (changed circumstances review) covers merchandise of an exporter or producer subject to a review (or to a request for a review) under this section, the Secretary may, after consulting with the exporter or producer:

(1) Rescind, in whole or in part, a review in progress under this subpart;

(2) Decline to initiate, in whole or in part, a review under this subpart; or

(3) Where the requesting party agrees in writing to waive the time limits of paragraph (i) of this section, conduct concurrent reviews, in which case all other provisions of this section will continue to apply with respect to the exporter or producer.

(k) *Expedited reviews in countervailing duty proceedings for noninvestigated exporters*—(1) *Request for review.* If, in a countervailing duty investigation, the Secretary limited the number of exporters or producers to be individually examined under section 777A(e)(2)(A) of the Act, an exporter that the Secretary

did not select for individual examination or that the Secretary did not accept as a voluntary respondent (*see* § 351.204(d)) may request a review under this paragraph (k). An exporter must submit a request for review within 30 days of the date of publication in the FEDERAL REGISTER of the countervailing duty order. A request must be accompanied by a certification that:

(i) The requester exported the subject merchandise to the United States during the period of investigation;

(ii) The requester is not affiliated with an exporter or producer that the Secretary individually examined in the investigation; and

(iii) The requester has informed the government of the exporting country that the government will be required to provide a full response to the Department's questionnaire.

(2) *Initiation of review*—(i) *In general.* The Secretary will initiate a review in the month following the month in which a request for review is due under paragraph (k)(1) of this section.

(ii) *Example.* The Secretary publishes a countervailing duty order on January 15. An exporter would have to submit a request for a review by February 14. The Secretary would initiate a review in March.

(3) *Conduct of review.* The Secretary will conduct a review under this paragraph (k) in accordance with the provisions of this section applicable to new shipper reviews, subject to the following exceptions:

(i) The period of review will be the period of investigation used by the Secretary in the investigation that resulted in the publication of the countervailing duty order (*see* § 351.204(b)(2));

(ii) The Secretary will not permit the posting of a bond or security in lieu of a cash deposit under paragraph (e) of this section;

(iii) The final results of a review under this paragraph (k) will not be the basis for the assessment of countervailing duties; and

(iv) The Secretary may exclude from the countervailing duty order in question any exporter for which the Secretary determines an individual net countervailable subsidy rate of zero or *de minimis* (*see* § 351.204(e)(1)), provided that the Secretary has verified the information on which the exclusion is based.

(l) *Exception from assessment in regional industry cases.* For procedures relating to a request for the exception from the assessment of antidumping or countervailing duties in a regional industry case, see § 351.212(f).

§ 351.215 Expedited antidumping review and security in lieu of estimated duty under section 736(c) of the Act.

(a) *Introduction.* Exporters and producers individually examined in an investigation normally cannot obtain a review of entries until an administrative review is requested. In addition, when an antidumping order is published, importers normally must begin to make a cash deposit of estimated antidumping duties upon the entry of subject merchandise. Section 736(c), however, establishes a special procedure under which exporters or producers may request an expedited review, and bonds, rather than cash deposits, may continue to be posted for a limited period of time if several criteria are satisfied. This section contains rules regarding requests for expedited antidumping reviews and the procedures applicable to such reviews.

(b) *In general.* If the Secretary determines that the criteria of section 736(c)(1) of the Act are satisfied, the Secretary:

(1) May permit, for not more than 90 days after the date of publication of an antidumping order, the posting of a bond or other security instead of the deposit of estimated antidumping duties required under section 736(a)(3) of the Act; and

(2) Will initiate an expedited antidumping review. Before making such a determination, the Secretary will make business proprietary information available, and will provide interested parties with an opportunity to file written comments, in accordance with section 736(c)(4) of the Act.

(c) *Procedures.* The Secretary will conduct an expedited antidumping review under this section in accordance with § 351.221.

§ 351.216 Changed circumstances review under section 751(b) of the Act.

(a) *Introduction*. Section 751(b) of the Act provides for what is known as a ''changed circumstances'' review. This section contains rules regarding requests for changed circumstances reviews and procedures for conducting such reviews.

(b) *Requests for changed circumstances review*. At any time, an interested party may request a changed circumstances review, under section 751(b) of the Act, of an order or a suspended investigation. Within 45 days after the date on which a request is filed, the Secretary will determine whether to initiate a changed circumstances review.

(c) *Limitation on changed circumstances review*. Unless the Secretary finds that good cause exists, the Secretary will not review a final determination in an investigation (*see* section 705(a) or section 735(a) of the Act) or a suspended investigation (*see* section 704 or section 734 of the Act) less than 24 months after the date of publication of notice of the final determination or the suspension of the investigation.

(d) *Procedures*. If the Secretary decides that changed circumstances sufficient to warrant a review exist, the Secretary will conduct a changed circumstances review in accordance with § 351.221.

(e) *Time limits*. The Secretary will issue final results of review (*see* § 351.221(b)(5)) within 270 days after the date on which the changed circumstances review is initiated, or within 45 days if all parties to the proceeding agree to the outcome of the review.

§ 351.217 Reviews to implement results of subsidies enforcement proceeding under section 751(g) of the Act.

(a) *Introduction*. Section 751(g) provides a mechanism for incorporating into an ongoing countervailing duty proceeding the results of certain subsidy-related disputes under the WTO Subsidies Agreement. Where the United States, in the WTO, has successfully challenged the ''nonactionable'' (*e.g.*, noncountervailable) status of a foreign subsidy, or where the United States has successfully challenged a prohibited or actionable subsidy, the Secretary may conduct a review to determine the effect, if any, of the successful outcome on an existing countervailing duty order or suspended investigation. This section contains rules regarding the initiation and conduct of reviews under section 751(g).

(b) *Violations of Article 8 of the Subsidies Agreement*. If:

(1) The Secretary receives notice from the Trade Representative of a violation of Article 8 of the Subsidies Agreement;

(2) The Secretary has reason to believe that merchandise subject to an existing countervailing duty order or suspended investigation is benefiting from the subsidy or subsidy program found to have been in violation of Article 8; and

(3) No administrative review is in progress, the Secretary will initiate an Article 8 violation review of the order or suspended investigation to determine whether the subject merchandise benefits from the subsidy or subsidy program found to have been in violation of Article 8 of the Subsidies Agreement.

(c) *Withdrawal of subsidy or imposition of countermeasures*. If the Trade Representative notifies the Secretary that, under Article 4 or Article 7 of the Subsidies Agreement:

(1)(i)(A) The United States has imposed countermeasures; and

(B) Such countermeasures are based on the effects in the United States of imports of merchandise that is the subject of a countervailing duty order; or

(ii) A WTO member country has withdrawn a countervailable subsidy provided with respect to merchandise subject to a countervailing duty order, then

(2) The Secretary will initiate an Article 4/Article 7 review of the order to determine if the amount of estimated duty to be deposited should be adjusted or the order should be revoked.

(d) *Procedures*. The Secretary will conduct an Article 8 violation review or an Article 4/Article 7 review under this section in accordance with § 351.221.

(e) *Expedited reviews.* The Secretary will conduct reviews under this section on an expedited basis.

§ 351.218 Sunset reviews under section 751(c) of the Act.

(a) *Introduction.* The URAA added a new procedure, commonly referred to as ''sunset reviews,'' in section 751(c) of the Act. In general, no later than once every five years, the Secretary must determine whether dumping or countervailable subsidies would be likely to continue or resume if an order were revoked or a suspended investigation were terminated. The Commission must conduct a similar review to determine whether injury would be likely to continue or resume in the absence of an order or suspended investigation. If the determinations under section 751(c) of both the Secretary and the Commission are affirmative, the order (or suspended investigation) remains in place. If either determination is negative, the order will be revoked (or the suspended investigation will be terminated). This section contains rules regarding the procedures for sunset reviews.

(b) *In general.* The Secretary will conduct a sunset review, under section 751(c) of the Act, of each antidumping and countervailing duty order and suspended investigation, and, under section 752(b) or section 752(c) (whichever is applicable), will determine whether revocation of an antidumping or countervailing duty order or termination of a suspended investigation would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy.

(c) *Notice of initiation of review; early initiation*—(1) *Initial sunset review.* No later than 30 days before the fifth anniversary date of an order or suspension of an investigation (*see* section 751(c)(1) of the Act), the Secretary will publish a notice of initiation of a sunset review (*see* section 751(c)(2) of the Act).

(2) *Subsequent sunset reviews.* In the case of an order or suspended investigation that is continued following a sunset review initiated under paragraph (c)(1) of this section, no later than 30 days before the fifth anniversary of the date of the last determination by the Commission to continue the order or suspended investigation, the Secretary will publish a notice of initiation of a sunset review (*see* section 751(c)(2) of the Act).

(3) *Early initiation.* The Secretary may publish a notice of initiation at an earlier date than the dates described in paragraph (c) (1) and (2) of this section if a domestic interested party demonstrates to the Secretary's satisfaction that an early initiation would promote administrative efficiency. However, if the Secretary determines that the domestic interested party that requested early initiation is a related party or an importer under section 771(4)(B) of the Act and § 351.203(e)(4), the Secretary may decline the request for early initiation.

(4) *Transition orders.* The Secretary will initiate sunset reviews of transition orders, as defined in section 751(c)(6)(C) of the Act, in accordance with section 751(c)(6) of the Act.

(d) *Participation in sunset review*—(1) *Domestic interested party notification of intent to participate*—(i) *Filing of notice of intent to participate.* Where a domestic interested party intends to participate in a sunset review, the interested party must, not later than 15 days after the date of publication in the FEDERAL REGISTER of the notice of initiation, file a notice of intent to participate in a sunset review with the Secretary.

(ii) *Contents of notice of intent to participate.* Every notice of intent to participate in a sunset review must include a statement expressing the domestic interested party's intent to participate in the sunset review and the following information:

(A) The name, address, and phone number of the domestic interested party (and its members, if applicable) that intends to participate in the sunset review and the statutory basis (under section 771(9) of the Act) for interested party status;

(B) A statement indicating whether the domestic producer:

(1) Is related to a foreign producer or to a foreign exporter under section 771(4)(B) of the Act; or

(2) Is an importer of the subject merchandise or is related to such an importer under section 771(4)(B) of the Act;

(C) The name, address, and phone number of legal counsel or other representative, if any;

(D) The subject merchandise and country subject to the sunset review; and

(E) The citation and date of publication in the FEDERAL REGISTER of the notice of initiation.

(iii) *Failure of domestic interested party to file notice of intent to participate in the sunset review.* (A) A domestic interested party that does not file a notice of Intent to participate in the sunset review will be considered not willing to participate in the review and the Secretary will not accept or consider any unsolicited submissions from that party during the course of the review.

(B) If no domestic interested party files a notice of intent to participate in the sunset review, the Secretary will:

(1) Conclude that no domestic interested party has responded to the notice of initiation under section 751(c)(3)(A) of the Act;

(2) Notify the International Trade Commission in writing as such normally not later than 20 days after the date of publication in the FEDERAL REGISTER of the notice of initiation; and

(3) Not later than 90 days after the date of publication in the FEDERAL REGISTER of the Notice of Initiation, issue a final determination revoking the order or terminating the suspended investigation (*see* §§ 351.221(c)(5)(ii) and 351.222(i)).

(2) *Waiver of response by a respondent interested party to a notice of initiation*—(i) *Filing of statement of waiver.* A respondent interested party may waive participation in a sunset review before the Department under section 751(c)(4) of the Act by filing a statement of waiver with the Department, not later than 30 days after the date of publication in the FEDERAL REGISTER of the notice of initiation. If a respondent interested party waives participation in a sunset review before the Department, the Secretary will not accept or consider any unsolicited submissions from that party during the course of the review. Waiving participation in a sunset review before the Department will not affect a party's opportunity to participate in the sunset review conducted by the International Trade Commission.

(ii) *Contents of statement of waiver.* Every statement of waiver must include a statement indicating that the respondent interested party waives participation in the sunset review before the Department and the following information:

(A) The name, address, and phone number of the respondent interested party waiving participation in the sunset review before the Department;

(B) The name, address, and phone number of legal counsel or other representative, if any;

(C) The subject merchandise and country subject to the sunset review; and

(D) The citation and date of publication in the FEDERAL REGISTER of the notice of initiation.

(iii) *No response from a respondent interested party.* The Secretary will consider the failure by a respondent interested party to file a complete substantive response to a notice of initiation under paragraph (d)(3) of this section as a waiver of participation in a sunset review before the Department.

(iv) *Waiver of participation by a foreign government in a CVD sunset review.* Where a foreign government waives participation in a CVD sunset review under paragraph (d)(2)(i) or (d)(2)(iii) of this section, the Secretary will:

(A) Conclude that respondent interested parties have provided inadequate response to the notice of initiation under section 751(c)(3)(B) of the Act;

(B) Notify the International Trade Commission and conduct an expedited sunset review and issue final results of review in accordance with paragraph (e)(1)(ii)(C) of this section; and

(C) Base the final results of review on the facts available in accordance with § 351.308(f), which normally will include a determination that revocation of the order or termination of the suspended investigation, as applicable, would be likely to lead to continuation or recurrence of a countervailable subsidy for all respondent interested parties.

(3) *Substantive response to a notice of initiation*—(i) *Time limit for substantive response to a notice of initiation.* A complete substantive response to a notice of initiation, filed under this section,

must be submitted to the Department not later than 30 days after the date of publication in the FEDERAL REGISTER of the notice of initiation.

(ii) *Required information to be filed by all interested parties in substantive response to a notice of initiation.* Except as provided in paragraph (d)(3)(v)(A) of this section, each interested party that intends to participate in a sunset review must file a submission with the Department containing the following:

(A) The name, address, and phone number of the interested party (and its members, if applicable) that intends to participate in the sunset review and the statutory basis (under section 771(9) of the Act) for interested party status;

(B) The name, address, and phone number of legal counsel or other representative, if any;

(C) The subject merchandise and country subject to the sunset review;

(D) The citation and date of publication in the FEDERAL REGISTER of the notice of initiation;

(E) A statement expressing the interested party's willingness to participate in the review by providing information requested by the Department, which must include a summary of that party's historical participation in any segment of the proceeding before the Department related to the subject merchandise;

(F) A statement regarding the likely effects of revocation of the order or termination of the suspended investigation under review, which must include any factual information, argument, and reason to support such statement;

(G) Factual information, argument, and reason concerning the dumping margin or countervailing duty rate, as applicable, that is likely to prevail if the Secretary revokes the order or terminates the suspended investigation, that the Department should select for a particular interested party(s);

(H) A summary of the Department's findings regarding duty absorption, if any, including a citation to the FEDERAL REGISTER notice in which the Department's findings are set forth; and

(I) A description of any relevant scope clarification or ruling, including a circumvention determination, or changed circumstances determination issued by the Department during the proceeding with respect to the subject merchandise.

(iii) *Additional required information to be filed by respondent interested parties in substantive response to a notice of initiation.* Except as provided in paragraph (d)(3)(v)(A) of this section, the submission from each respondent interested party that intends to participate in a sunset review must also contain the following:

(A) That party's individual weighted average dumping margin or countervailing duty rate, as applicable, from the investigation and each subsequent completed administrative review, including the final margin or rate, as applicable, where such margin or rate was changed as a result of a final and conclusive court order;

(B) For each of the five calendar years (or fiscal years, if more appropriate) preceding the year of publication of the notice of initiation, that party's volume and value (normally on an FOB basis) of exports of subject merchandise to the United States;

(C) As applicable, for the calendar year (or fiscal year, if more appropriate) preceding the year of initiation of the dumping investigation, that party's volume and value (normally on an FOB basis) of exports of subject merchandise to the United States;

(D) For each of the five calendar years (or fiscal years, if more appropriate) preceding the year of publication of the notice of initiation, on a volume basis (or value basis, if more appropriate), that party's percentage of the total exports of subject merchandise (defined in section 771(25) of the Act) to the United States; and

(E) For each of the three most recent years, including the year of publication of the notice of initiation, that party's volume and value (normally on an FOB basis) of exports of subject merchandise to the United States during the two fiscal quarters as of the month preceding the month in which the notice of initiation was published.

(iv) *Optional information to be filed by interested parties in substantive response to a notice of initiation*—(A) *Showing good cause.* An interested party may submit information or evidence to

show good cause for the Secretary to consider other factors under section 752(b)(2) (CVD) or section 752(c)(2) (AD) of the Act and paragraph (e)(2)(ii) of this section. Such information or evidence must be submitted in the party's substantive response to the notice of initiation under paragraph (d)(3) of this section.

(B) *Other information.* A substantive response from an interested party under paragraph (d)(3) of this section also may contain any other relevant information or argument that the party would like the Secretary to consider.

(v) *Required information to be filed by a foreign government in substantive response to the notice of initiation in a CVD sunset review*—(A) *In general.* The foreign government of a country subject to a CVD sunset review (*see* section 771(9)(B) of the Act) that intends to participate in a CVD sunset review must file a submission with the Department under paragraph (d)(3)(i) of this section containing the information required under paragraphs (d)(3)(ii) (A) through (E) of this section.

(B) *Additional required information to be filed by a foreign government in a CVD sunset review involving an order where the investigation was conducted on an aggregate basis.* The submission from the foreign government of a country subject to a CVD sunset review, involving an order where the investigation was conducted on an aggregate basis, must also contain:

(1) The information required under paragraphs (d)(3)(ii)(F), (d)(3)(ii)(G), and (d)(3)(ii)(I) of this section;

(2) The countervailing duty rate from the investigation and each subsequent completed administrative review, including the final rate where such rate was changed as a result of a final and conclusive court order; and

(3) For each of the five calendar years (or fiscal years, if more appropriate) preceding the year of publication of the notice of initiation, the volume and value (normally on an FOB basis) of exports of subject merchandise to the United States.

(vi) *Substantive responses from industrial users and consumers.* An industrial user of the subject merchandise or a representative consumer organization, as described in section 777(h) of the Act, that intends to participate in a sunset review must file a submission with the Department under paragraph (d)(3)(i) of this section containing the information required under paragraphs (d)(3)(ii) (A) through (D) of this section and may submit other relevant information under paragraphs (d)(3)(ii) and (d)(3)(iv) of this section.

(4) *Rebuttal to substantive response to a notice of initiation.* Any interested party that files a substantive response to a notice of initiation under paragraph (d)(3) of this section may file a rebuttal to any other party's substantive response to a notice of initiation not later than five days after the date the substantive response is filed with the Department. Except as provided in § 351.309(e), the Secretary normally will not accept or consider any additional information from a party after the time for filing rebuttals has expired, unless the Secretary requests additional information from parties after determining to proceed to a full sunset review under paragraph (e)(2) of this section.

(e) *Conduct of sunset review*—(1) *Adequacy of response to a notice of initiation*—(i) *Adequacy of response from domestic interested parties*—(A) *In general.* The Secretary will make its determination of adequacy of response on a case-by-case basis; however, the Secretary normally will conclude that domestic interested parties have provided adequate response to a notice of initiation where it receives a complete substantive response under paragraph (d)(3) of this section from at least one domestic interested party.

(B) *Disregarding response from a domestic interested party.* In making its determination concerning the adequacy of response from domestic interested parties under paragraph (e)(1)(i)(A) of this section, the Secretary may disregard a response from a domestic producer:

(*1*) Related to a foreign producer or to a foreign exporter under section 771(4)(B) of the Act; or

(*2*) That is an importer of the subject merchandise or is related to such an importer under section 771(4)(B) of the Act (*see* paragraph (d)(1)(ii)(B) of this section).

(C) *Inadequate response from domestic interested parts.* Where the Secretary determines to disregard a response from a domestic interested party(s) under paragraph (e)(1)(i)(A) or (e)(1)(i)(B) of this section and no other domestic interested party has filed a complete substantive response to the notice of initiation under paragraph (d)(3) of this section, the Secretary will:

(*1*) Conclude that no domestic interested party has responded to the notice of initiation under section 751(c)(3)(A) of the Act;

(*2*) Notify the International Trade Commission in writing as such normally not later than 40 days after the date of publication in the FEDERAL REGISTER of the Notice of Initiation; and

(*3*) Not later than 90 days after the date of publication in the FEDERAL REGISTER of the Notice of Initiation, issue a final determination revoking the order or terminating the suspended investigation (see §§ 351.221(c)(5)(ii) and 351.222(i)).

(ii) *Adequacy of response from respondent interested parties*—(A) *In general.* The Secretary will makes its determination of adequacy of response on a case-by-case basis; however, the Secretary normally will conclude that respondent interested parties have provided adequate response to a notice of initiation where it receives complete substantive responses under paragraph (d)(3) of this section from respondent interested parties accounting on average for more than 50 percent, on a volume basis (or value basis, if appropriate), of the total exports of subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation.

(B) *Failure of a foreign government to file a substantive response to a notice of initiation in a CVD sunset review.* If a foreign government fails to file a complete substantive response to a notice of initiation in a CVD sunset review under paragraph (d)(3)(v) of this section or waives participation in a CVD sunset review under paragraph (d)(2)(i) or (d)(2)(iii) of this section, the Secretary will:

(*1*) Conclude that respondent interested parties have provided inadequate response to the Notice of Initiation under section 751(c)(3)(B) of the Act;

(*2*) Notify the International Trade Commission and conduct an expedited sunset review and issue final results of review in accordance with paragraph (e)(1)(ii)(C) of this section; and

(*3*) Base the final results of review on the facts available in accordance with § 351.308(f), which normally will include a determination that revocation of the order or termination of the suspended investigation, as applicable, would be likely to lead to continuation or recurrence of a countervailable subsidy for all respondent interested parties.

(C) *Inadequate response from respondent interested parties.* If the Secretary determines that respondent interested parties provided inadequate response to a notice of initiation under paragraph (d)(2)(iv), (e)(1)(ii)(A), or (e)(1)(ii)(B) of this section, the Secretary:

(*1*) Will notify the International Trade Commission in writing as such normally not later than 50 days after the date of publication in the FEDERAL REGISTER of the Notice of Initiation; and

(*2*) Normally will conduct an expedited sunset review and, not later than 120 days after the date of publication in the FEDERAL REGISTER of the notice of initiation, issue, without further investigation, final results of review based on the facts available in accordance with § 351.308(f) (*see* section 751(c)(3)(B) of the Act and § 351.221(c)(5)(ii)).

(2) *Full sunset review upon adequate response from domestic and respondent interested parties*—(i) *In general.* Normally, only where the Department receives adequate response to the notice of initiation from domestic interested parties under paragraph (e)(1)(i)(A) of this section and from respondent interested parties under paragraph (e)(1)(ii)(A) of this section, will the Department conduct a full sunset review. Even where the Department conducts a full sunset review, only under the most extraordinary circumstances will the Secretary rely on a countervailing duty rate or a dumping margin other than those it calculated and published in its prior determinations, and in no case will the Secretary calculate a net

countervailable subsidy or a dumping margin for a new shipper in the context of a sunset review.

(ii) [Reserved]

(iii) *Consideration of other factors under section 752(b)(2) (CVD) or section 752(c)(2) (AD) of the Act.* The Secretary will consider other factors under section 752(b)(2) (CVD) or section 752(c)(2) (AD) of the Act if the Secretary determines that good cause to consider such other factors exists. The Secretary normally will consider such other factors only where it conducts a full sunset review under paragraph (e)(2)(i) of this section.

(f) *Time limits*—(1) *Preliminary results of full sunset review.* The Department normally will issue its preliminary results in a full sunset review not later than 110 days after the date of publication in the FEDERAL REGISTER of the notice of initiation.

(2) *Verification*—(i) *In general.* The Department will verify factual information relied upon in making its final determination normally only in a full sunset review (*see* section 782(i)(2) of the Act and § 351.307(b)(1)(iii)) and only where needed. The Department will conduct verification normally only if, in its preliminary results, the Department determines that revocation of the order or termination of the suspended investigation, as applicable, is not likely to lead to continuation or recurrence of a countervailable subsidy or dumping (*see* section 752(b) and section 752(c) of the Act), as applicable, and the Department's preliminary results are not based on countervailing duty rates or dumping margins, as applicable, determined in the investigation or subsequent reviews.

(ii) *Timing of verification.* The Department normally will conduct verification, under paragraph (f)(2)(i) of this section and § 351.307, approximately 120 days after the date of publication in the FEDERAL REGISTER of the notice of initiation.

(3) *Final results of full sunset review and notification to the International Trade Commission*—(i) *Timing of final results of review and notification to the International Trade Commission.* The Department normally will issue its final results in a full sunset review and notify the International Trade Commission of its results of review not later than 240 days after the date of publication in the FEDERAL REGISTER of the notice of initiation (*see* section 751(c)(5)(A) of the Act).

(ii) *Extension of time limit.* If the Secretary determines that a full sunset review is extraordinarily complicated under section 751(c)(5)(C) of the Act, the Secretary may extend the period for issuing final results by not more than 90 days (*see* section 751(c)(5)(B) of the Act).

(4) *Notice of continuation of an order or suspended investigation; notice of revocation of an order or termination of a suspended investigation.* Except as provided in paragraph (d)(1)(iii)(B)(*3*) of this section and § 351.222(i)(1)(i), the Department normally will issue its determination to continue an order or suspended investigation, or to revoke an order or terminate a suspended investigation, as applicable, not later than seven days after the date of publication in the FEDERAL REGISTER of the International Trade Commission's determination concluding the sunset review. The Department immediately thereafter will publish notice of its determination in the FEDERAL REGISTER.

[62 FR 27379, May 19, 1997, as amended at 63 FR 13520, Mar. 20, 1998]

§ 351.219 Reviews of countervailing duty orders in connection with an investigation under section 753 of the Act.

(a) *Introduction.* Section 753 of the Act is a transition provision for countervailing duty orders that were issued under section 303 of the Act without an injury determination by the Commission. Under the Subsidies Agreement, one country may not impose countervailing duties on imports from another WTO Member without first making a determination that such imports have caused injury to a domestic industry. Section 753 provides a mechanism for providing an injury test with respect to those ''no-injury'' orders under section 303 that apply to merchandise from WTO Members. This section contains rules regarding requests for section 753 investigations by a domestic interested party; and the procedures that the Department will follow in reviewing a

countervailing duty order and providing the Commission with advice regarding the amount and nature of a countervailable subsidy.

(b) *Notification of domestic interested parties.* The Secretary will notify directly domestic interested parties as soon as possible after the opportunity arises for requesting an investigation by the Commission under section 753 of the Act.

(c) *Initiation and conduct of section 753 review.* Where the Secretary deems it necessary in order to provide to the Commission information on the amount or nature of a countervailable subsidy (*see* section 753(b)(2) of the Act), the Secretary may initiate a section 753 review of the countervailing duty order in question. The Secretary will conduct a section 753 review in accordance with § 351.221.

§ 351.220 Countervailing duty review at the direction of the President under section 762 of the Act.

At the direction of the President or a designee, the Secretary will conduct a review under section 762(a)(1) of the Act to determine if a countervailable subsidy is being provided with respect to merchandise subject to an understanding or other kind of quantitative restriction agreement accepted under section 704(a)(2) or section 704(c)(3) of the Act. The Secretary will conduct a review under this section in accordance with § 351.221. If the Secretary's final results of review under this section and the Commission's final results of review under section 762(a)(2) of the Act are both affirmative, the Secretary will issue a countervailing duty order and order suspension of liquidation in accordance with section 762(b) of the Act.

§ 351.221 Review procedures.

(a) *Introduction.* The procedures for reviews are similar to those followed in investigations. This section details the procedures applicable to reviews in general, as well as procedures that are unique to certain types of reviews.

(b) *In general.* After receipt of a timely request for a review, or on the Secretary's own initiative when appropriate, the Secretary will:

(1) Promptly publish in the FEDERAL REGISTER notice of initiation of the review;

(2) Before or after publication of notice of initiation of the review, send to appropriate interested parties or other persons (or, if appropriate, a sample of interested parties or other persons) questionnaires requesting factual information for the review;

(3) Conduct, if appropriate, a verification under § 351.307;

(4) Issue preliminary results of review, based on the available information, and publish in the FEDERAL REGISTER notice of the preliminary results of review that include:

(i) The rates determined, if the review involved the determination of rates; and

(ii) An invitation for argument consistent with § 351.309;

(5) Issue final results of review and publish in the FEDERAL REGISTER notice of the final results of review that include the rates determined, if the review involved the determination of rates;

(6) If the type of review in question involves a determination as to the amount of duties to be assessed, promptly after publication of the notice of final results instruct the Customs Service to assess antidumping duties or countervailing duties (whichever is applicable) on the subject merchandise covered by the review, except as otherwise provided in § 351.106(c) with respect to *de minimis* duties; and

(7) If the review involves a revision to the cash deposit rates for estimated antidumping duties or countervailing duties, instruct the Customs Service to collect cash deposits at the revised rates on future entries.

(c) *Special rules*—(1) *Administrative reviews and new shipper reviews.* In an administrative review under section 751(a)(1) of the Act and § 351.213 and a new shipper review under section 751(a)(2)(B) of the Act and § 351.214 the Secretary:

(i) Will publish the notice of initiation of the review no later than the last day of the month following the anniversary month or the semiannual anniversary month (as the case may be); and

(ii) Normally will send questionnaires no later than 30 days after the date of publication of the notice of initiation.

(2) *Expedited antidumping review.* In an expedited antidumping review under section 736(c) of the Act and § 351.215, the Secretary:

(i) Will include in the notice of initiation of the review an invitation for argument consistent with § 351.309, and a statement that the Secretary is permitting the posting of a bond or other security instead of a cash deposit of estimated antidumping duties;

(ii) Will instruct the Customs Service to accept, instead of the cash deposit of estimated antidumping duties under section 736(a)(3) of the Act, a bond for each entry of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of initiation of the investigation and through the date not later than 90 days after the date of publication of the order; and

(iii) Will not issue preliminary results of review.

(3) *Changed circumstances review.* In a changed circumstances review under section 751(b) of the Act and § 351.216, the Secretary:

(i) Will include in the preliminary results of review and the final results of review a description of any action the Secretary proposed based on the preliminary or final results;

(ii) May combine the notice of initiation of the review and the preliminary results of review in a single notice if the Secretary concludes that expedited action is warranted; and

(iii) May refrain from issuing questionnaires under paragraph (b)(2) of this section.

(4) *Article 8 Violation review and Article 4/Article 7 review.* In an Article 8 Violation review or an Article 4/Article 7 review under section 751(g) of the Act and § 351.217, the Secretary:

(i) Will include in the notice of initiation of the review an invitation for argument consistent with § 351.309 and will notify all parties to the proceeding at the time the Secretary initiates the review;

(ii) Will not issue preliminary results of review; and

(iii) In the final results of review will indicate the amount, if any, by which the estimated duty to be deposited should be adjusted, and, in an Article 4/Article 7 review, any action, including revocation, that the Secretary will take based on the final results.

(5) *Sunset review.* In a sunset review under section 751(c) of the Act and § 351.218:

(i) The notice of initiation of a sunset review will contain a request for the information described in § 351.218(d); and

(ii) The Secretary, without issuing preliminary results of review, may issue final results of review under paragraphs (3) or (4) of subsection 751(c) of the Act if the conditions of those paragraphs are satisfied.

(6) *Section 753 review.* In a section 753 review under section 753 of the Act and § 351.219, the Secretary:

(i) Will include in the notice of initiation of the review an invitation for argument consistent with § 351.309, and will notify all parties to the proceeding at the time the Secretary initiates the review; and

(ii) May decline to issue preliminary results of review.

(7) *Countervailing duty review at the direction of the President.* In a countervailing duty review at the direction of the President under section 762 of the Act and § 351.220, the Secretary will:

(i) Include in the notice of initiation of the review a description of the merchandise, the period under review, and a summary of the available information which, if accurate, would support the imposition of countervailing duties;

(ii) Notify the Commission of the initiation of the review and the preliminary results of review;

(iii) Include in the preliminary results of review the countervailable subsidy, if any, during the period of review and a description of official changes in the subsidy programs made by the government of the affected country that affect the estimated countervailable subsidy; and

(iv) Include in the final results of review the countervailable subsidy, if any, during the period of review and 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 countervailable subsidy.

[62 FR 27379, May 19, 1997, as amended at 63 FR 13525, Mar. 20, 1998]

§ 351.222 Revocation of orders; termination of suspended investigations.

(a) *Introduction.* ''Revocation'' is a term of art that refers to the end of an antidumping or countervailing proceeding in which an order has been issued. ''Termination'' is the companion term for the end of a proceeding in which the investigation was suspended due to the acceptance of a suspension agreement. Generally, a revocation or termination may occur only after the Department or the Commission have conducted one or more reviews under section 751 of the Act. This section contains rules regarding requirements for a revocation or termination; and procedures that the Department will follow in determining whether to revoke an order or terminate a suspended investigation.

(b) *Revocation or termination based on absence of dumping.* (1)(i) In determining whether to revoke an antidumping duty order or terminate a suspended antidumping investigation, the Secretary will consider:

(A) Whether all exporters and producers covered at the time of revocation by the order or the suspension agreement have sold the subject merchandise at not less than normal value for a period of at least three consecutive years; and

(B) Whether the continued application of the antidumping duty order is otherwise necessary to offset dumping.

(ii) If the Secretary determines, based upon the criteria in paragraphs (b)(1)(i)(A) and (B) of this section, that the antidumping duty order or suspension of the antidumping duty investigation is no longer warranted, the Secretary will revoke the order or terminate the investigation.

(2)(i) In determining whether to revoke an antidumping duty order in part, the Secretary will consider:

(A) Whether one or more exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years;

(B) Whether, for any exporter or producer that the Secretary previously has determined to have sold the subject merchandise at less than normal value, the exporter or producer agrees in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value; and

(C) Whether the continued application of the antidumping duty order is otherwise necessary to offset dumping.

(ii) If the Secretary determines, based upon the criteria in paragraphs (b)(2)(i)(A) through (C) of this section, that the antidumping duty order as to those producers or exporters is no longer warranted, the Secretary will revoke the order as to those producers or exporters.

(3) Revocation of nonproducing exporter. In the case of an exporter that is not the producer of subject merchandise, the Secretary normally will revoke an order in part under paragraph (b)(2) of this section only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for the revocation.

(c) *Revocation or termination based on absence of countervailable subsidy.* (1)(i) In determining whether to revoke a countervailing duty order or terminate a suspended countervailing duty investigation, the Secretary will consider:

(A) Whether the government of the affected country has eliminated all countervailable subsidies on the subject merchandise by abolishing for the subject merchandise, for a period of at least three consecutive years, all programs that the Secretary has found countervailable;

(B) Whether exporters and producers of the subject merchandise are continuing to receive any net countervailable subsidy from an abolished program referred to in paragraph (c)(1)(i)(A) of this section; and

(C) Whether the continued application of the countervailing duty order or suspension of countervailing duty

investigation is otherwise necessary to offset subsidization.

(ii) If the Secretary determines, based upon the criteria in paragraphs (c)(1)(i)(A) through (C) of this section, that the countervailing duty order or suspension of the countervailing duty investigation is no longer warranted, the Secretary will revoke the order or terminate the suspended investigation.

(2)(i) In determining whether to revoke a countervailing duty order or terminate a suspended countervailing duty investigation, the Secretary will consider:

(A) Whether all exporters and producers covered at the time of revocation by the order or the suspension agreement have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years; and

(B) Whether the continued application of the countervailing duty order or suspension of the countervailing duty investigation is otherwise necessary to offset subsidization.

(ii) If the Secretary determines, based upon the criteria in paragraphs (c)(2)(i)(A) and (B) of this section, that the countervailing duty order or the suspension of the countervailing duty investigation is no longer warranted, the Secretary will revoke the order or terminate the suspended investigation.

(3)(i) In determining whether to revoke a countervailing duty order in part, the Secretary will consider:

(A) Whether one or more exporters or producers covered by the order have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years;

(B) Whether, for any exporter or producer that the Secretary previously has determined to have received any net countervailable subsidy on the subject merchandise, the exporter or producer agrees in writing to their immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, has received any net countervailable subsidy on the subject merchandise; and

(C) Whether the continued application of the countervailing duty order is otherwise necessary to offset subsidization.

(ii) If the Secretary determines, based upon the criteria in paragraphs (c)(3)(i)(A) through (C) of this section, that the countervailing duty order as to those exporters or producers is no longer warranted, the Secretary will revoke the order as to those exporters or producers.

(4) Revocation of nonproducing exporter. In the case of an exporter that is not the producer of subject merchandise, the Secretary normally will revoke an order in part under paragraph (c)(3) of this section only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for the revocation.

(d) *Treatment of unreviewed intervening years*—(1) *In general.* The Secretary will not revoke an order or terminate a suspended investigation under paragraphs (b) or (c) of this section unless the Secretary has conducted a review under this subpart of the first and third (or fifth) years of the three-and five-year consecutive time periods referred to in those paragraphs. The Secretary need not have conducted a review of an intervening year (*see* paragraph (d)(2) of this section). However, except in the case of a revocation or termination under paragraph (c)(1) of this section (government abolition of countervailable subsidy programs), before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in commercial quantities of the subject merchandise to which a revocation or termination will apply.

(2) *Intervening year.* ''Intervening year'' means any year between the first and final year of the consecutive period on which revocation or termination is conditioned.

(e) *Request for revocation or termination*—(1) *Antidumping proceeding.*

During the third and subsequent annual anniversary months of the publication of an antidumping order or suspension of an antidumping investigation, an exporter or producer may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (b) of this section with regard to that person if the person submits with the request:

(i) The person's certification that the person sold the subject merchandise at not less than normal value during the period of review described in §351.213(e)(1), and that in the future the person will not sell the merchandise at less than normal value;

(ii) The person's certification that, during each of the consecutive years referred to in paragraph (b) of this section, the person sold the subject merchandise to the United States in commercial quantities; and

(iii) If applicable, the agreement regarding reinstatement in the order or suspended investigation described in paragraph (b)(2)(iii) of this section.

(2) *Countervailing duty proceeding.* (i) During the third and subsequent annual anniversary months of the publication of a countervailing duty order or suspension of a countervailing duty investigation, the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (c)(1) of this section if the government submits with the request its certification that it has satisfied, during the period of review described in §351.213(e)(2), the requirements of paragraph (c)(1)(i) of this section regarding the abolition of countervailable subsidy programs, and that it will not reinstate for the subject merchandise those programs or substitute other countervailable subsidy programs;

(ii) During the fifth and subsequent annual anniversary months of the publication of a countervailing duty order or suspended countervailing duty investigation, the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (c)(2) of this section if the government submits with the request:

(A) Certifications for all exporters and producers covered by the order or suspension agreement that they have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years (*see* paragraph (c)(2)(i) of this section);

(B) Those exporters' and producers' certifications that they will not apply for or receive any net countervailable subsidy on the subject merchandise from any program the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs (*see* paragraph (c)(2)(ii) of this section); and

(C) A certification from each exporter or producer that, during each of the consecutive years referred to in paragraph (c)(2) of this section, that person sold the subject merchandise to the United States in commercial quantities; or

(iii) During the fifth and subsequent annual anniversary months of the publication of a countervailing duty order, an exporter or producer may request in writing that the Secretary revoke the order with regard to that person if the person submits with the request:

(A) A certification that the person has not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years (*see* paragraph (c)(3)(i) of this section), including calculations demonstrating the basis for the conclusion that the person received zero or *de minimis* net countervailable subsidies during the review period of the administrative review in connection with which the person has submitted the request for revocation;

(B) A certification that the person will not apply for or receive any net countervailable subsidy on the subject merchandise from any program the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs (*see* paragraph (c)(3)(ii) of this section);

(C) The person's certification that, during each of the consecutive years referred to in paragraph (c)(3) of this section, the person sold the subject

merchandise to the United States in commercial quantities; and

(D) The agreement described in paragraph (c)(3)(iii) of this section (reinstatement in order).

(f) *Procedures.* (1) Upon receipt of a timely request for revocation or termination under paragraph (e) of this section, the Secretary will consider the request as including a request for an administrative review and will initiate and conduct a review under § 351.213.

(2) In addition to the requirements of § 351.221 regarding the conduct of an administrative review, the Secretary will:

(i) Publish with the notice of initiation under § 351.221(b)(1), notice of ''Request for Revocation of Order (in part)'' or ''Request for Termination of Suspended Investigation'' (whichever is applicable);

(ii) Conduct a verification under § 351.307;

(iii) Include in the preliminary results of review under § 351.221(b)(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 decides that there is a reasonable basis to believe that the requirements for revocation or termination are met, publish with the notice of preliminary results of review under § 351.221(b)(4) notice of ''Intent to Revoke Order (in Part)'' or ''Intent to Terminate Suspended Investigation'' (whichever is applicable);

(v) Include in the final results of review under § 351.221(b)(5) the Secretary's final decision whether the requirements for revocation or termination are met; and

(vi) If the Secretary determines that the requirements for revocation or termination are met, publish with the notice of final results of review under § 351.221(b)(5) notice of ''Revocation of Order (in Part)'' or ''Termination of Suspended Investigation'' (whichever is applicable).

(3) If the Secretary revokes an order in whole or in part, the Secretary will order the suspension of liquidation terminated 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.

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

(i) Producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) or suspended investigation pertains have expressed a lack of interest in the order, in whole or in part, or suspended investigation (*see* section 782(h) of the Act); or

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

(2) If at any time the Secretary concludes from the available information that changed circumstances sufficient to warrant revocation or termination may exist, the Secretary will conduct a changed circumstances review under § 351.216.

(3) In addition to the requirements of § 351.221, the Secretary will:

(i) Publish with the notice of initiation (*see* § 353.221(b)(1), notice of ''Consideration of Revocation of Order (in Part)'' or ''Consideration of Termination of Suspended Investigation'' (whichever is applicable);

(ii) If the Secretary's conclusion regarding the possible existence of changed circumstances (*see* paragraph (g)(2) of this section), is not based on a request, the Secretary, not later than the date of publication of the notice of ''Consideration of Revocation of Order (in Part)'' or ''Consideration of Termination of Suspended Investigation'' (whichever is applicable) (*see* paragraph (g)(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 that the Secretary has reason to believe is a domestic interested party;

(iii) Conduct a verification, if appropriate, under § 351.307;

(iv) Include in the preliminary results of review, under § 351.221(b)(4), the Secretary's decision whether there is a reasonable basis to believe that

changed circumstances warrant revocation or termination;

(v) If the Secretary's preliminary decision is that changed circumstances warrant revocation or termination, publish with the notice of preliminary results of review, under §351.221(b)(4), notice of ''Intent to Revoke Order (in Part)'' or ''Intent to Terminate Suspended Investigation'' (whichever is applicable);

(vi) Include in the final results of review, under §351.221(b)(5), the Secretary's final decision whether changed circumstances warrant revocation or termination; and

(vii) If the Secretary's determines that changed circumstances warrant revocation or termination, publish with the notice of final results of review, under §351.221(b)(5), notice of ''Revocation of Order (in Part)'' or ''Termination of Suspended Investigation'' (whichever is applicable).

(4) If the Secretary revokes an order, in whole or in part, under paragraph (g) of this section, 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.

(h) *Revocation or termination based on injury reconsideration.* If the Commission determines in a changed circumstances review under section 751(b)(2) of the Act that the revocation of an order or termination of a suspended investigation is not likely to lead to continuation or recurrence of material injury, 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 ''Termination of Suspended Investigation'' (whichever is applicable).

(i) *Revocation or termination based on sunset review*—(1) *Circumstances under which the Secretary will revoke an order or terminate a suspended investigation.* In the case of a sunset review under §351.218, the Secretary will revoke an order or terminate a suspended investigation:

(i) Under section 751(c)(3)(A) of the Act, where no domestic interested party files a Notice of Intent to Participate in the sunset review under §351.218(d)(1), or where the Secretary determines under §351.218(e)(1)(i)(C) that domestic interested parties have provided inadequate response to the Notice of Initiation, not later than 90 days after the date of publication in the FEDERAL REGISTER of the notice of initiation;

(ii) Under section 751(d)(2) of the Act, where the Secretary determines that revocation or termination is not likely to lead to continuation or recurrence of a countervailable subsidy or dumping (*see* section 752(b) and section 752(c) of the Act), as applicable, not later than 240 days (or 330 days where a full sunset review is fully extended) after the date of publication in the FEDERAL REGISTER of the notice of initiation; or

(iii) Under section 751(d)(2) of the Act, where the International Trade Commission makes a determination, under section 752(a) of the Act, that revocation or termination is not likely to lead to continuation or recurrence of material injury, not later than seven days after the date of publication in the FEDERAL REGISTER of the International Trade Commission's determination concluding the sunset review.

(2) *Effective date of revocation*—(i) *In general.* Except as provided in paragraph (i)(2)(ii) of this section, where the Secretary revokes an order or terminates a suspended investigation, pursuant to section 751(c)(3)(A) or section 751(d)(2) of the Act (*see* paragraph (i)(1) of this section), the revocation or termination will be effective on the fifth anniversary of the date of publication in the FEDERAL REGISTER of the order or suspended investigation, as applicable. This paragraph also applies to subsequent sunset reviews of transition orders (*see* paragraph (i)(2)(ii) of this section and section 751(c)(6)(A)(iii) of the Act).

(ii) *Transition orders.* Where the Secretary revokes a transition order (defined in section 751(c)(6)(C) of the Act) pursuant to section 751(c)(3)(A) or section 751(d)(2) of the Act (*see* paragraph (i)(1) of this section), the revocation or termination will be effective on January 1, 2000. This paragraph does not apply to subsequent sunset reviews of

transition orders (*see* section 751(c)(6)(A)(iii) of the Act).

(j) *Revocation of countervailing duty order based on Commission negative determination under section 753 of the Act.* The Secretary will revoke a countervailing duty order, and will order the refund, with interest, of any estimated countervailing duties collected during the period liquidation was suspended under section 753(a)(4) of the Act upon being notified by the Commission that:

(1) The Commission has determined that an industry in the United States is not likely to be materially injured if the countervailing duty order in question is revoked (*see* section 753(a)(1) of the Act); or

(2) A domestic interested party did not make a timely request for an investigation under section 753(a) of the Act (*see* section 753(a)(3) of the Act).

(k) *Revocation based on Article 4/Article 7 review*—(1) *In general.* The Secretary may revoke a countervailing duty order, in whole or in part, following an Article 4/Article 7 review under § 351.217(c), due to the imposition of countermeasures by the United States or the withdrawal of a countervailable subsidy by a WTO member country (*see* section 751(g)(2) of the Act).

(2) *Additional Requirements.* In addition to the requirements of § 351.221, if the Secretary determines to revoke an order as the result of an Article 4/Article 7 review, the Secretary will:

(i) Conduct a verification, if appropriate, under § 351.307;

(ii) Include in the final results of review, under § 351.221(b)(5), the Secretary's final decision whether the order should be revoked;

(iii) If the Secretary's final decision is that the order should be revoked:

(A) Determine the effective date of the revocation;

(B) Publish with the notice of final results of review, under § 351.221(b)(5), a notice of ''Revocation of Order (in Part),'' that will include the effective date of the revocation; and

(C) Order any suspension of liquidation ended for merchandise covered by the revocation that was entered on or after the effective date of the revocation, and instruct the Customs Service to release any cash deposit or bond.

(l) *Revocation under section 129.* The Secretary may revoke an order under section 129 of the URAA (implementation of WTO dispute settlement).

(m) *Transition rule.* In the case of time periods that, under section 291(a)(2) of the URAA, are subject to review under the provisions of the Act prior to its amendment by the URAA, and for purposes of determining whether the three-or five-year requirements of paragraphs (b) and (c) of this section are satisfied, the following rules will apply:

(1) *Antidumping proceedings.* The Secretary will consider sales at not less than foreign market value to be equivalent to sales at not less than normal value.

(2) *Countervailing duty proceedings.* The Secretary will consider the absence of a subsidy, as defined in section 771(5) of the Act prior to its amendment by the URAA, to be equivalent to the absence of a countervailable subsidy, as defined in section 771(5) of the Act, as amended by the URAA.

(n) *Cross-reference.* For the treatment in a subsequent investigation of business proprietary information submitted to the Secretary in connection with a changed circumstances review under § 351.216 or a sunset review under § 351.218 that results in the revocation of an order (or termination of a suspended investigation), see section 777(b)(3) of the Act.

[62 FR 27379, May 19, 1997, as amended at 63 FR 13523, Mar. 20, 1998; 64 FR 51240, Sept. 22, 1999]

§ 351.223 Procedures for initiation of downstream product monitoring.

(a) *Introduction.* Section 780 of the Act establishes a mechanism for monitoring imports of ''downstream products.'' In general, section 780 is aimed at situations where, following the issuance of an antidumping or countervailing duty order on a product that is used as a component in another product, exports to the United States of that other (or ''downstream'') product increase. Although the Department is responsible for determining whether trade in the downstream product should be monitored, the Commission is responsible for conducting the actual

monitoring. The Commission must report the results of its monitoring to the Department, and the Department must consider the reports in determining whether to self-initiate an antidumping or countervailing duty investigation on the downstream product. This section contains rules regarding applications for the initiation of downstream product monitoring and decisions regarding such applications.

(b) *Contents of application.* An application to designate a downstream product for monitoring under section 780 of the Act must 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 that is incorporated into the 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 country of production of both the downstream and component products and the name of any intermediate country from which the merchandise is imported;

(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 that have been suspended, or antidumping or countervailing duty orders that have been issued, on merchandise that is related to the component part and that is manufactured in the same foreign country in which the component part is manufactured;

(8) A list of all antidumping or countervailing duty investigations that have been suspended, or antidumping or countervailing duty orders that have been issued, on merchandise that is manufactured or exported by the manufacturer or exporter of the component part and 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 the downstream product.

(c) *Determination of sufficiency of application.* Within 14 days after an application is filed under paragraph (b) of this section, the Secretary will rule on the sufficiency of the application by making the determinations described in section 780(a)(2) of the Act.

(d) *Notice of Determination.* The Secretary will publish in the FEDERAL REGISTER notice of each affirmative or negative ''monitoring'' determination made under section 780(a)(2) of the Act, and if the determination under section 780(a)(2)(A) of the Act and a determination made under any clause of section 780(a)(2)(B) of the Act 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, the information upon which the Secretary based the initiation.

§ 351.224 Disclosure of calculations and procedures for the correction of ministerial errors.

(a) *Introduction.* In the interests of transparency, the Department has long had a practice of providing parties with the details of its antidumping and countervailing duty calculations. This practice has come to be referred to as a ''disclosure.'' This section contains rules relating to requests for disclosure and procedures for correcting ministerial errors.

(b) *Disclosure.* The Secretary will disclose to a party to the proceeding calculations performed, if any, in connection with a preliminary determination

under section 703(b) or section 733(b) of the Act, a final determination under section 705(a) or section 735(a) of the Act, and a final results of a review under section 736(c), section 751, or section 753 of the Act, normally within five days after the date of any public announcement or, if there is no public announcement of, within five days after the date of publication of, the preliminary determination, final determination, or final results of review (whichever is applicable). The Secretary will disclose to a party to the proceeding calculations performed, if any, in connection with a preliminary results of review under section 751 or section 753 of the Act, normally not later than ten days after the date of the public announcement of, or, if there is no public announcement, within five days after the date of publication of, the preliminary results of review.

(c) *Comments regarding ministerial errors*—(1) *In general.* A party to the proceeding to whom the Secretary has disclosed calculations performed in connection with a preliminary determination may submit comments concerning a significant ministerial error in such calculations. A party to the proceeding to whom the Secretary has disclosed calculations performed in connection with a final determination or the final results of a review may submit comments concerning any ministerial error in such calculations. Comments concerning ministerial errors made in the preliminary results of a review should be included in a party's case brief.

(2) *Time limits for submitting comments.* A party to the proceeding must file comments concerning ministerial errors within five days after the earlier of:

(i) The date on which the Secretary released disclosure documents to that party; or

(ii) The date on which the Secretary held a disclosure meeting with that party.

(3) *Replies to comments.* Replies to comments submitted under paragraph (c)(1) of this section must be filed within five days after the date on which the comments were filed with the Secretary. The Secretary will not consider replies to comments submitted in connection with a preliminary determination.

(4) *Extensions.* A party to the proceeding may request an extension of the time limit for filing comments concerning a ministerial error in a final determination or final results of review under § 351.302(c) within three days after the date of any public announcement, or, if there is no public announcement, within five days after the date of publication of the final determination or final results of review, as applicable. The Secretary will not extend the time limit for filing comments concerning a significant ministerial error in a preliminary determination.

(d) *Contents of comments and replies.* Comments filed under paragraph (c)(1) of this section must explain the alleged ministerial error by reference to applicable evidence in the official record, and must present what, in the party's view, is the appropriate correction. In addition, comments concerning a preliminary determination must demonstrate how the alleged ministerial error is significant (*see* paragraph (g) of this section) by illustrating the effect on individual weighted-average dumping margin or countervailable subsidy rate, the all-others rate, or the country-wide subsidy rate (whichever is applicable). Replies to any comments must be limited to issues raised in such comments.

(e) *Corrections.* The Secretary will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination, or correct any ministerial error by amending the final determination or the final results of review (whichever is applicable). Where practicable, the Secretary will announce publicly the issuance of a correction notice, and normally will do so within 30 days after the date of public announcement, or, if there is no public announcement, within 30 days after the date of publication, of the preliminary determination, final determination, or final results of review (whichever is applicable). In addition, the Secretary will publish notice of such corrections in the FEDERAL REGISTER. A correction notice will not alter the anniversary

month of an order or suspended investigation for purposes of requesting an administrative review (*see* § 351.213) or a new shipper review (*see* § 351.214) or initiating a sunset review (*see* § 351.218).

(f) *Definition of ''ministerial error.''* Under 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 similar type of unintentional error which the Secretary considers ministerial.

(g) *Definition of ''significant ministerial error.''* Under this section, *significant ministerial error* means a ministerial error (*see* paragraph (f) of this section), the correction of which, either singly or in combination with other errors:

(1) Would result in a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin or the countervailable subsidy rate (whichever is applicable) calculated in the original (erroneous) preliminary determination; or

(2) Would result in a difference between a weighted-average dumping margin or countervailable subsidy rate (whichever is applicable) of zero (or *de minimis*) and a weighted-average dumping margin or countervailable subsidy rate of greater than *de minimis*, or vice versa.

§ 351.225 Scope rulings.

(a) *Introduction.* Issues arise as to whether a particular product is included within the scope of an antidumping or countervailing duty order or a suspended investigation. Such issues can arise because the descriptions of subject merchandise contained in the Department's determinations must be written in general terms. At other times, a domestic interested party may allege that changes to an imported product or the place where the imported product is assembled constitutes circumvention under section 781 of the Act. When such issues arise, the Department issues ''scope rulings'' that clarify the scope of an order or suspended investigation with respect to particular products. This section contains rules regarding scope rulings, requests for scope rulings, procedures for scope inquiries, and standards used in determining whether a product is within the scope of an order or suspended investigation.

(b) *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 or countervailing duty order or a suspended investigation, the Secretary will initiate an inquiry, and will notify all parties on the Department's scope service list of its initiation of a scope inquiry.

(c) *By application*—(1) *Contents and service of application.* Any interested party may apply for a ruling as to whether a particular product is within the scope of an order or a suspended investigation. The application must be served upon all parties on the scope service list described in paragraph (n) of this section, and must contain the following, to the extent reasonably available to the interested party:

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

(ii) A statement of the interested party's position as to whether the product is within the scope of an order or a suspended investigation, including:

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

(B) Citations to any applicable statutory authority, and

(C) Any factual information supporting this position, including excerpts from portions of the Secretary's or the Commission's investigation, and relevant prior scope rulings.

(2) *Deadline for action on application.* Within 45 days of the date of receipt of an application for a scope ruling, the Secretary will issue a final ruling under paragraph (d) of this section or will initiate a scope inquiry under paragraph (e) of this section.

(d) *Ruling based upon the application.* If the Secretary can determine, based solely upon the application and the descriptions of the merchandise referred to in paragraph (k)(1) of this section, whether a product is included within the scope of an order or a suspended investigation, the Secretary will issue a

final ruling as to whether the product is included within the order or suspended investigation. The Secretary will notify all persons on the Department's scope service list (*see* paragraph (n) of this section) of the final ruling.

(e) *Ruling where further inquiry is warranted.* If the Secretary finds that the issue of whether a product is included within the scope of an order or a suspended investigation cannot be determined based solely upon the application and the descriptions of the merchandise referred to in paragraph (k)(1) of this section, the Secretary will notify by mail all parties on the Department's scope service list of the initiation of a scope inquiry.

(f) *Notice and procedure.* (1) Notice of the initiation of a scope inquiry issued under paragraph (b) or (e) of this section will include:

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

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

(iii) A schedule for submission of comments that normally will allow interested parties 20 days in which to provide comments on, and supporting factual information relating to, the inquiry, and 10 days in which to provide any rebuttal to such comments.

(2) The Secretary may issue questionnaires and verify submissions received, where appropriate.

(3) Whenever the Secretary finds 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 or suspended investigation. The Secretary will notify all parties on the Department's scope service list (see paragraph (n) of this section) of the preliminary scope ruling, and will invite comment. Unless otherwise specified, interested parties will have within twenty days from the date of receipt of the notification in which to submit comments, and ten days thereafter in which to submit rebuttal comments.

(4) The Secretary will issue a final ruling as to whether the product which is the subject of the scope inquiry is included within the order or suspended investigation, including an explanation of the factual and legal conclusions on which the final ruling is based. The Secretary will notify all parties on the Department's scope service list (*see* paragraph (n) of this section) of the final scope ruling.

(5) The Secretary will issue a final ruling under paragraph (k) of this section (other scope rulings) normally within 120 days of the initiation of the inquiry under this section. The Secretary will issue a final ruling under paragraph (g), (h), (i), or (j) of this section (circumvention rulings under section 781 of the Act) normally within 300 days from the date of the initiation of the scope inquiry.

(6) When an administrative review under § 351.213, a new shipper review under § 351.214, or an expedited antidumping review under § 351.215 is in progress at the time the Secretary provides notice of the initiation of a scope inquiry (*see* paragraph (e)(1) of this section), the Secretary may conduct the scope inquiry in conjunction with that review.

(7)(i) The Secretary will notify the Commission in writing of the proposed inclusion of products in an order prior to issuing a final ruling under paragraph (f)(4) of this section based on a determination under:

(A) Section 781(a) of the Act with respect to merchandise completed or assembled in the United States (other than minor completion or assembly);

(B) Section 781(b) of the Act with respect to merchandise completed or assembled in other foreign countries; or

(C) Section 781(d) of the Act with respect to later-developed products which incorporate a significant technological advance or significant alteration of an earlier product.

(ii) If the Secretary notifies the Commission under paragraph (f)(7)(i) of this section, 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, after consultation, the Commission believes that a significant injury issue is presented by the proposed inclusion

of a product within an order, the Commission may provide written advice to the Secretary as to whether the inclusion would be inconsistent with the affirmative injury determination of the Commission on which the order is based.

(g) *Products completed or assembled in the United States.* Under section 781(a) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order imported parts or components referred to in section 781(a)(1)(B) of the Act that are used in the completion or assembly of the merchandise in the United States at any time such order is in effect. In making this determination, the Secretary will not consider any single factor of section 781(a)(2) of the Act to be controlling. In determining the value of parts or components purchased from an affiliated person under section 781(a)(1)(D) of the Act, or of processing performed by an affiliated person under section 781(a)(2)(E) of the Act, the Secretary may determine the value of the part or component on the basis of the cost of producing the part or component under section 773(f)(3) of the Act.

(h) *Products completed or assembled in other foreign countries.* Under section 781(b) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order, at any time such order is in effect, imported merchandise completed or assembled in a foreign country other than the country to which the order applies. In making this determination, the Secretary will not consider any single factor of section 781(b)(2) of the Act to be controlling. In determining the value of parts or components purchased from an affiliated person under section 781(b)(1)(D) of the Act, or of processing performed by an affiliated person under section 781(b)(2)(E) of the Act, the Secretary may determine the value of the part or component on the basis of the cost of producing the part or component under section 773(f)(3) of the Act.

(i) *Minor alterations of merchandise.* Under section 781(c) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order articles altered in form or appearance in minor respects.

(j) *Later-developed merchandise.* In determining whether later-developed merchandise is within the scope of an antidumping or countervailing duty order, the Secretary will apply section 781(d) of the Act.

(k) *Other scope determinations.* With respect to those scope determinations that are not covered under paragraphs (g) through (j) of this section, in considering whether a particular product is included within the scope of an order or a suspended investigation, 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 (including prior scope determinations) 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;

(iv) The channels of trade in which the product is sold; and

(v) The manner in which the product is advertised and displayed.

(l) *Suspension of liquidation.* (1) When the Secretary conducts a scope inquiry under paragraph (b) or (e) of this section, and the product in question is already subject to suspension of liquidation, that suspension of liquidation will be continued, pending a preliminary or a final scope ruling, at the cash deposit rate that would apply if the product were ruled to be included within the scope of the order.

(2) If the Secretary issues a preliminary scope ruling under paragraph (f)(3) of this section to the effect that the product in question is included within the scope of the order, any suspension of liquidation described in paragraph (l)(1) of this section will continue. If liquidation has not been suspended, the Secretary will instruct the Customs Service to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after the

date of initiation of the scope inquiry. If the Secretary issues a preliminary scope ruling to the effect that the product in question is not included within the scope of the order, the Secretary will order any suspension of liquidation on the product ended, and will instruct the Customs Service to refund any cash deposits or release any bonds relating to that product.

(3) If the Secretary issues a final scope ruling, under either paragraph (d) or (f)(4) of this section, to the effect that the product in question is included within the scope of the order, any suspension of liquidation under paragraph (l)(1) or (l)(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 to require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry. If the Secretary's final scope ruling is to the effect that the product in question 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.

(4) If, within 90 days of the initiation of a review of an order or a suspended investigation under this subpart, the Secretary issues a final ruling that a product is included within the scope of the order or suspended investigation that is the subject of the review, the Secretary, where practicable, will include sales of that product for purposes of the review and will seek information regarding such sales. If the Secretary issues a final ruling after 90 days of the initiation of the review, the Secretary may consider sales of the product for purposes of the review on the basis of non-adverse facts available. However, notwithstanding the pendency of a scope inquiry, if the Secretary considers it appropriate, the Secretary may request information concerning the product that is the subject of the scope inquiry for purposes of a review under this subpart.

(m) *Orders covering identical products.* Except for a scope inquiry and a scope ruling that involves section 781(a) or section 781(b) of the Act (assembly of parts or components in the United States or in a third country), if more than one order or suspended investigation cover the same subject merchandise, and if the Secretary considers it appropriate, the Secretary may conduct a single inquiry and issue a single scope ruling that applies to all such orders or suspended investigations.

(n) *Service of applications; scope service list.* The requirements of § 351.303(f) apply to this section, except that an application for a scope ruling must be served on all persons on the Department's scope service list. For purposes of this section, the ''scope service list'' will include all persons that have participated in any segment of the proceeding. If an application for a scope ruling in one proceeding results in a single inquiry that will apply to another proceeding (*see* paragraph (m) of this section), the Secretary will notify persons on the scope service list of the other proceeding of the application for a scope ruling.

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

Subpart C—Information and Argument

§ 351.301 Time limits for submission of factual information.

(a) *Introduction.* The Department obtains most of its factual information in antidumping and countervailing duty proceedings from submissions made by interested parties during the course of the proceeding. This section sets forth the time limits for submitting such factual information, including information in questionnaire responses, publicly available information to value factors in nonmarket economy cases, allegations concerning market viability, allegations of sales at prices below the cost of production, countervailable subsidy allegations, and upstream subsidy allegations. Section 351.302 sets

forth the procedures for requesting an extension of such time limits. Section 351.303 contains the procedural rules regarding filing, format, translation, service, and certification of documents.

(b) *Time limits in general.* Except as provided in paragraphs (c) and (d) of this section and §351.302, a submission of factual information is due no later than:

(1) For a final determination in a countervailing duty investigation or an antidumping investigation, seven days before the date on which the verification of any person is scheduled to commence, except that factual information requested by the verifying officials from a person normally will be due no later than seven days after the date on which the verification of that person is completed;

(2) For the final results of an administrative review, 140 days after the last day of the anniversary month, except that factual information requested by the verifying officials from a person normally will be due no later than seven days after the date on which the verification of that person is completed;

(3) For the final results of a changed circumstances review, sunset review, or section 762 review, 140 days after the date of publication of notice of initiation of the review, except that factual information requested by the verifying officials from a person normally will be due no later than seven days after the date on which the verification of that person is completed;

(4) For the final results of a new shipper review, 100 days after the date of publication of notice of initiation of the review, except that factual information requested by the verifying officials from a person normally will be due no later than seven days after the date on which the verification of that person is completed; and

(5) For the final results of an expedited antidumping review, Article 8 violation review, Article 4/Article 7 review, or section 753 review, a date specified by the Secretary.

(c) *Time limits for certain submissions*—(1) *Rebuttal, clarification, or correction of factual information.* Any interested party may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party at any time prior to the deadline provided in this section for submission of such factual information. If factual information is submitted less than 10 days before, on, or after (normally only with the Department's permission) the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify, or correct the factual information no later than 10 days after the date such factual information is served on the interested party or, if appropriate, made available under APO to the authorized applicant.

(2) *Questionnaire responses and other submissions on request.* (i) Notwithstanding paragraph (b) of this section, the Secretary may request any person to submit factual information at any time during a proceeding.

(ii) 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 following: the time limit for the response; the information to be provided; the form and manner in which the interested party must submit the information; and that failure to submit requested information in the requested form and manner by the date specified may result in use of the facts available under section 776 of the Act and §351.308.

(iii) Interested parties will have at least 30 days from the date of receipt to respond to the full initial questionnaire. The time limit for response to individual sections of the questionnaire, if the Secretary requests a separate response to such sections, may be less than the 30 days allotted for response to the full questionnaire. The date of receipt will be seven days from the date on which the initial questionnaire was transmitted.

(iv) A notification by an interested party, under section 782(c)(1) of the Act, of difficulties in submitting information in response to a questionnaire issued by the Secretary is to be submitted in writing within 14 days after the date of receipt of the initial questionnaire.

(v) A respondent interested party may request in writing that the Secretary conduct a questionnaire presentation. The Secretary may conduct a questionnaire presentation if the Secretary notifies the government of the affected country and that government does not object.

(3) *Submission of publicly available information to value factors under § 351.408(c).* Notwithstanding paragraph (b) of this section, interested parties may submit publicly available information to value factors under § 351.408(c) within:

(i) For a final determination in an antidumping investigation, 40 days after the date of publication of the preliminary determination;

(ii) For the final results of an administrative review, new shipper review, or changed circumstances review, 20 days after the date of publication of the preliminary results of review; and

(iii) For the final results of an expedited antidumping review, a date specified by the Secretary.

(d) *Time limits for certain allegations*—(1) *Market viability and the basis for determining a price-based normal value.* In an antidumping investigation or administrative review, allegations regarding market viability, including the exceptions in § 351.404(c)(2), are due, with all supporting factual information, within 40 days after the date on which the initial questionnaire was transmitted, unless the Secretary alters this time limit.

(2) *Sales at prices below the cost of production.* An allegation of sales at prices below the cost of production made by the petitioner or other domestic interested party is due within:

(i) In an antidumping investigation,

(A) On a country-wide basis, 20 days after the date on which the initial questionnaire was transmitted to any person, unless the Secretary alters this time limit; or

(B) On a company-specific basis, 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limit;

(ii) In an administrative review, new shipper review, or changed circumstances review, on a company-specific basis, 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limit; or

(iii) In an expedited antidumping review, on a company-specific basis, 10 days after the date of publication of the notice of initiation of the review.

(3) *Purchases of major inputs from an affiliated party at prices below the affiliated party's cost of production.* An allegation of purchases of major inputs from an affiliated party at prices below the affiliated party's cost of production made by the petitioner or other domestic interested party is due within 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limits.

(4) *Countervailable subsidy; upstream subsidy*—(i) *In general.* A countervailable subsidy allegation made by the petitioner or other domestic interested party is due no later than:

(A) In a countervailing duty investigation, 40 days before the scheduled date of the preliminary determination; or

(B) In an administrative review, new shipper review, or changed circumstances review, 20 days after all responses to the initial questionnaire are filed with the Department, unless the Secretary alters this time limit.

(ii) *Exception for upstream subsidy allegation in an investigation.* In a countervailing duty investigation, an allegation of upstream subsidies made by the petitioner or other domestic interested party is due no later than:

(A) 10 days before the scheduled date of the preliminary determination; or

(B) 15 days before the scheduled date of the final determination.

(5) *Targeted dumping.* In an antidumping investigation, an allegation of targeted dumping made by the petitioner or other domestic interested

party under § 351.414(f)(3) is due no later than 30 days before the scheduled date of the preliminary determination.

(6) *Green light and Green box claims.* (i) *In general.* A claim that a particular subsidy or subsidy program should be accorded non-countervailable status under section 771(5B),(C), or (D) of the Act (''green light subsidies'') or under section 771(5B)(F) of the Act (''green box subsidies'' must be made by the competent government with the full participation of the government authority responsible for funding and/or administering the program. Such claims are due no later than:

(i) In a countervailing duty investigation, 40 days before the scheduled date of the preliminary determination, or

(ii) In an administrative review, new shipper review, or changed circumstance review, 20 days afer all responses to the initial questionnaires are filed with the Department, unless the Secretary alters this time limit.

(7) *Investigation of notified subsidies.* If the Secretary determines that there is insufficient evidence to demonstrate that an alleged subsidy or subsidy program has been notified under Article 8.3 of the WTO Subsidies and Countervailing Measures Agreement, the alleged subsidy or subsidy program will be included in the countervailing duty investigation or administrative, new shipper, or changed circumstance review. If the government authority claiming green light status establishes to the Secretary's satisfaction that the alleged subsidy or subsidy program has been notified, the Secretary will terminate the investigation of the notified subsidy.

[62 FR 27379, May 19, 1997, as amended at 63 FR 65417, Nov. 25, 1998]

§ 351.302 Extension of time limits; return of untimely filed or unsolicited material.

(a) *Introduction.* This section sets forth the procedures for requesting an extension of a time limit. In addition, this section explains that certain untimely filed or unsolicited material will be returned to the submitter together with an explanation of the reasons for the return of such material.

(b) *Extension of time limits.* Unless expressly precluded by statute, the Secretary may, for good cause, extend any time limit established by this part.

(c) *Requests for extension of specific time limit.* Before the applicable time limit specified under § 351.301 expires, a party may request an extension pursuant to paragraph (b) of this section. The request must be in writing and state the reasons for the request. An extension granted to a party must be approved in writing.

(d) *Return of untimely filed or unsolicited material.* (1) Unless the Secretary extends a time limit under paragraph (b) of this section, the Secretary will not consider or retain in the official record of the proceeding:

(i) Untimely filed factual information, written argument, or other material that the Secretary returns to the submitter, except as provided under § 351.104(a)(2); or

(ii) Unsolicited questionnaire responses, except as provided under § 351.204(d)(2).

(2) The Secretary will return such information, argument, or other material, or unsolicited questionnaire response with, to the extent practicable, written notice stating the reasons for return.

§ 351.303 Filing, format, translation, service, and certification of documents.

(a) *Introduction.* This section contains the procedural rules regarding filing, format, service, translation, and certification of documents and applies to all persons submitting documents to the Department for consideration in an antidumping or countervailing duty proceeding.

(b) *Where to file; time of filing.* Persons must address and submit all documents to the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, between the hours of 8:30 a.m. and 5:00 p.m. on business days (*see* § 351.103(b)). If the applicable time limit expires on a non-business day, the Secretary will accept documents that are filed on the next business day.

(c) *Number of copies; filing of business proprietary and public versions under the one-day lag rule; information in double brackets*—(1) *In general.* Except as provided in paragraphs (c)(2) and (c)(3) of this section, a person must file six copies of each submission with the Department.

(2) *Application of the one-day lag rule*—(i) *Filing the business proprietary version.* A person must file one copy of the business proprietary version of any document with the Department within the applicable time limit. Business proprietary version means the version of a document containing information for which a person claims business proprietary treatment under § 351.304.

(ii) *Filing the final business proprietary version; bracketing corrections.* By the close of business one business day after the date the business proprietary version is filed under paragraph (c)(2)(i) of this section, a person must file six copies of the final business proprietary version of the document with the Department. The final business proprietary version must be identical to the business proprietary version filed on the previous day except for any bracketing corrections. Although a person must file six copies of the *complete* final business proprietary version with the Department, the person may serve other persons with only those pages containing bracketing corrections.

(iii) *Filing the public version.* Simultaneously with the filing of the final business proprietary version under paragraph (c)(2)(ii) of this section, a person also must file three copies of the public version of such document (see § 351.304(c)) with the Department.

(iv) *Information in double brackets.* If a person serves authorized applicants with a business proprietary version of a document that excludes information in double brackets pursuant to § 351.304(b)(2), the person simultaneously must file with the Department one copy of those pages in which information in double brackets has been excluded.

(3) *Computer media and printouts.* The Secretary may require submission of factual information on computer media unless the Secretary modifies such requirements under section 782(c) of the Act (*see* § 351.301(c)(2)(iv)). The computer medium must be accompanied by the number of copies of any computer printout specified by the Secretary. All information on computer media must be releasable under APO (see § 351.305).

(d) *Format of copies*—(1) *In general.* Unless the Secretary alters the requirements of this section, documents filed with the Department must conform to the specification and marking requirements under paragraph (d)(2) of this section or the Secretary may refuse to accept such documents for the official record of the proceeding.

(2) *Specifications and markings.* A person must submit documents on letter-size paper, single-sided and double-spaced, and must securely bind each copy as a single document with any letter of transmittal as the first page of the document. A submitter must 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, indicate the Department case number;

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

(iii) On the third line, indicate whether the document is for an investigation, scope inquiry, circumvention inquiry, downstream product monitoring application, or review and, if the latter, indicate the inclusive dates of the review, the type of review, and the section number of the Act corresponding to the type of review;

(iv) On the fourth line, indicate the Department office conducting the proceeding;

(v) On the fifth and subsequent lines, indicate whether any portion of the document contains business 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.'' Indicate ''Business Proprietary Treatment Requested'' on the top of each page containing business proprietary information. In addition, include the warning ''Bracketing of Business Proprietary Information is Not Final for One Business Day After Date of Filing'' on the

top of each page containing business proprietary information in the copy of the business proprietary version filed under §351.303(c)(2)(i) (one-day lag rule). Do not include this warning in the copies of the final business proprietary version filed on the next business day under §351.303(c)(2)(ii) (*see* §351.303(c)(2) and §351.304(c)); and

(vi) For public versions of business proprietary documents required under §351.304(c), complete the marking as required in paragraphs (d)(2)(i)–(v) of this section for the business proprietary document, but conspicuously mark the first page ''Public Version.''

(e) *Translation to English.* A document submitted in a foreign language must be accompanied by an English translation of the entire document or of only pertinent portions, where appropriate, unless the Secretary waives this requirement for an individual document. A party must obtain the Department's approval for submission of an English translation of only portions of a document prior to submission to the Department.

(f) *Service of copies on other persons*—(1)(i) *In general.* Except as provided in §351.202(c) (filing of petition), §351.207(f)(1) (submission of proposed suspension agreement), and paragraph (f)(3) of this section, a person filing a document with the Department simultaneously must serve a copy of the document on all other persons on the service list by personal service or first class mail.

(ii) *Service of public versions or a party's own business proprietary information.* Notwithstanding paragraphs (f)(1)(i) and (f)(3) of this section, service of the public version of a document or of the business proprietary version of a document containing only the server's own business proprietary information, on persons on the service list, may be made by facsimile transmission or other electronic transmission process, with the consent of the person to be served.

(2) *Certificate of service.* Each document filed with the Department must include a certificate of service listing each person served (including agents), the type of document served, and the date and method of service on each person. The Secretary may refuse to accept any document that is not accompanied by a certificate of service.

(3) *Service requirements for certain documents*—(i) *Briefs.* In addition to the certificate of service requirements contained in paragraph (f)(2) of this section, a person filing a case or rebuttal brief with the Department simultaneously must serve a copy of that brief on all persons on the service list and on any U.S. Government agency that has submitted a case or rebuttal brief in the segment of the proceeding. If, under §351.103(c), a person has designated an agent to receive service that is located in the United States, service on that person must be either by personal service on the same day the brief is filed or by overnight mail or courier on the next day. If the person has designated an agent to receive service that is located outside the United States, service on that person must be by first class airmail.

(ii) *Request for review.* In addition to the certificate of service requirements under paragraph (f)(2) of this section, an interested party that files with the Department a request for an expedited antidumping review, an administrative review, a new shipper review, or a changed circumstances review must serve a copy of the request by personal service or first class mail on each exporter or producer specified in the request and on the petitioner by the end of the anniversary month or within ten days of filing the request for review, whichever is later. If the interested party that files the request is unable to locate a particular exporter or producer, or the petitioner, the Secretary may accept the request for review if the Secretary is satisfied that the party made a reasonable attempt to serve a copy of the request on such person.

(g) *Certifications.* A person must file with each submission containing factual information the certification in paragraph (g)(1) of this section and, in addition, if the person has legal counsel or another representative, the certification in paragraph (g)(2) of this section:

(1) For the person's officially responsible for presentation of the factual information:

I, (name and title), currently employed by (person), 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 the person's legal counsel or other representative:

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

§ 351.304 Establishing business proprietary treatment of information.

(a) *Claim for business proprietary treatment.* (1) Any person that submits factual information to the Secretary in connection with a proceeding may:

(i) Request that the Secretary treat any part of the submission as business proprietary information that is subject to disclosure only under an administrative protective order,

(ii) Claim that there is a clear and compelling need to withhold certain business proprietary information from disclosure under an administrative protective order, or

(iii) In an investigation, identify customer names that are exempt from disclosure under administrative protective order under section 777(c)(1)(A) of the Act.

(2) The Secretary will require that all business proprietary information presented to, or obtained or generated by, the Secretary during a segment of a proceeding be disclosed to authorized applicants, except for

(i) Customer names submitted in an investigation,

(ii) Information for which the Secretary finds that there is a clear and compelling need to withhold from disclosure, and

(iii) Privileged or classified information.

(b) *Identification of business proprietary information.* (1) *In general.* A person submitting information must identify the information for which it claims business proprietary treatment by enclosing the information within single brackets. The submitting person must provide with the information an explanation of why each item of bracketed information is entitled to business proprietary treatment. A person submitting a request for business proprietary treatment also must include an agreement to permit disclosure under an administrative protective order, unless the submitting party claims that there is a clear and compelling need to withhold the information from disclosure under an administrative protective order.

(2) *Information claimed to be exempt from disclosure under administrative protective order.* (i) If the submitting person claims that there is a clear and compelling need to withhold certain information from disclosure under an administrative protective order (see paragraph (a)(1)(ii) of this section), the submitting person must identify the information by enclosing the information within double brackets, and must include a full explanation of the reasons for the claim.

(ii) In an investigation, the submitting person may enclose business proprietary customer names within double brackets (see paragraph (a)(1)(iii) of this section).

(iii) The submitting person may exclude the information in double brackets from the business proprietary information version of the submission served on authorized applicants. See § 351.303 for filing and service requirements.

(c) *Public version.* (1) A person filing a submission that contains information for which business proprietary treatment is claimed must file a public version of the submission. The public version must be filed on the first business day after the filing deadline for the business proprietary version of the submission (see § 351.303(b)). The public version must contain a summary of the bracketed information in sufficient detail to permit a reasonable understanding of the substance of the information. If the submitting person claims that summarization is not possible, the claim must be accompanied by a full explanation of the reasons supporting that claim. Generally, numerical data will be considered adequately summarized if grouped or presented in terms of indices or figures within 10 percent of the actual figure. If an individual portion of the numerical data is voluminous, at least one

percent representative of that portion must be summarized. A submitter should not create a public summary of business proprietary information of another person.

(2) If a submitting party discovers that it has failed to bracket information correctly, the submitter may file a complete, corrected business proprietary version of the submission along with the public version (see § 351.303(b)). At the close of business on the day on which the public version of a submission is due under paragraph (c)(2) of this section, however, the bracketing of business proprietary information in the original business proprietary version or, if a corrected version is timely filed, the corrected business proprietary version will become final. Once bracketing has become final, the Secretary will not accept any further corrections to the bracketing of information in a submission, and the Secretary will treat non-bracketed information as public information.

(d) *Nonconforming submissions.* (1) *In general.* The Secretary will return a submission that does not meet the requirements of section 777(b) of the Act and this section with a written explanation. The submitting person may take any of the following actions within two business days after receiving the Secretary's explanation:

(i) Correct the problems and resubmit the information;

(ii) If the Secretary denied a request for business proprietary treatment, agree to have the information in question treated as public information;

(iii) If the Secretary granted business proprietary treatment but denied a claim that there was a clear and compelling need to withhold information under an administrative protective order, agree to the disclosure of the information in question under an administrative protective order; or

(iv) Submit other material concerning the subject matter of the returned information. If the submitting person does not take any of these actions, the Secretary will not consider the returned submission.

(2) *Timing.* The Secretary normally will determine the status of information within 30 days after the day on which the information was submitted. If the business proprietary status of information is in dispute, the Secretary will treat the relevant portion of the submission as business proprietary information until the Secretary decides the matter.

[63 FR 24401, May 4, 1998]

§ 351.305 Access to business proprietary information.

(a) *The administrative protective order.* The Secretary will place an administrative protective order on the record within two days after the day on which a petition is filed or an investigation is self-initiated, or five days after initiating any other segment of a proceeding. The administrative protective order will require the authorized applicant to:

(1) Establish and follow procedures to ensure that no employee of the authorized applicant's firm releases business proprietary information to any person other than the submitting party, an authorized applicant, or an appropriate Department official identified in section 777(b) of the Act;

(2) Notify the Secretary of any changes in the facts asserted by the authorized applicant in its administrative protective order application;

(3) Destroy business proprietary information by the time required under the terms of the administrative protective order;

(4) Immediately report to the Secretary any apparent violation of the administrative protective order; and

(5) Acknowledge that any unauthorized disclosure may subject the authorized applicant, the firm of which the authorized applicant is a partner, associate, or employee, and any partner, associate, or employee of the authorized applicant's firm to sanctions listed in part 354 of this chapter (19 CFR part 354).

(b) *Application for access under administrative protective order.* (1) Generally, no more than two independent representatives of a party to the proceeding may have access to business proprietary information under an administrative protective order. A party must designate a lead firm if the party has more than one independent authorized applicant firm.

(2) A representative of a party to the proceeding may apply for access to business proprietary information under the administrative protective order by submitting Form ITA–367 to the Secretary. Form ITA–367 must identify the applicant and the segment of the proceeding involved, state the basis for eligibility of the applicant for access to business proprietary information, and state the agreement of the applicant to be bound by the administrative protective order. Form ITA–367 may be prepared on the applicant's own word-processing system, and must be accompanied by a certification that the application is consistent with Form ITA–367 and an acknowledgment that any discrepancies will be interpreted in a manner consistent with Form ITA–367. An applicant must apply to receive all business proprietary information on the record of the segment of a proceeding in question, but may waive service of business proprietary information it does not wish to receive from other parties to the proceeding. An applicant must serve an APO application on the other parties in the same manner and at the same time as it serves the application on the Department.

(3) To minimize the disruption caused by late applications, an application should be filed before the first questionnaire response has been submitted. Where justified, however, applications may be filed up to the date on which the case briefs are due, but any applicant filing after the first questionnaire response is submitted will be liable for costs associated with the additional production and service of business proprietary information already on the record. Parties have five days to serve their business proprietary information already on the record to applicants authorized to receive such information after such information has been placed on the record.

(c) *Approval of access under administrative protective order; administrative protective order service list.* The Secretary will grant access to a qualified applicant by including the name of the applicant on an administrative protective order service list. Access normally will be granted within five days of receipt of the application unless there is a question regarding the eligibility of the applicant to receive access. In that case, the Secretary will decide whether to grant the applicant access within 30 days of receipt of the application. The Secretary will provide by the most expeditious means available the administrative protective order service list to parties to the proceeding on the day the service list is issued or amended.

[63 FR 24402, May 4, 1998]

§ 351.306 Use of business proprietary information.

(a) *By the Secretary.* The Secretary may disclose business proprietary information submitted to the Secretary only to:

(1) An authorized applicant;

(2) An employee of the Department of Commerce or the International Trade Commission directly involved in the proceeding in which the information is submitted;

(3) An employee of the Customs Service directly involved in conducting a fraud investigation relating to an antidumping or countervailing duty proceeding;

(4) The U.S. Trade Representative as provided by 19 U.S.C. 3571(i);

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

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

(b) *By an authorized applicant.* An authorized applicant may retain business proprietary information for the time authorized by the terms of the administrative protective order. An authorized applicant may use business proprietary information for purposes of the segment of a proceeding in which the information was submitted. If business proprietary information that was submitted in a segment of the proceeding is relevant to an issue in a different segment of the proceeding, an authorized applicant may place such information on the record of the subsequent segment as authorized by the APO.

(c) *Identifying parties submitting business proprietary information.* (1) If a party submits a document containing business proprietary information of another person, the submitting party must identify, contiguously with each

item of business proprietary information, the person that originally submitted the item (e.g., Petitioner, Respondent A, Respondent B). Business proprietary information not identified will be treated as information of the person making the submission. If the submission contains business proprietary information of only one person, it shall so state on the first page and identify the person that originally submitted the business proprietary information on the first page.

(2) If a party to a proceeding is not represented by an authorized applicant, a party submitting a document containing the unrepresented party's business proprietary information must serve the unrepresented party with a version of the document that contains only the unrepresented party's business proprietary information. The document must not contain the business proprietary information of other parties.

(d) *Disclosure to parties not authorized to receive business proprietary information.* No person, including an authorized applicant, may disclose the business proprietary information of another person to any other person except another authorized applicant or a Department official described in paragraph (a)(2) of this section. Any person that is not an authorized applicant and that is served with business proprietary information must return it to the sender immediately, to the extent possible without reading it, and must notify the Department. An allegation of an unauthorized disclosure will subject the person that made the alleged unauthorized disclosure to an investigation and possible sanctions under 19 CFR part 354.

[63 FR 24403, May 4, 1998]

§ 351.307 Verification of information.

(a) *Introduction.* Prior to making a final determination in an investigation or issuing final results of review, the Secretary may verify relevant factual information. This section clarifies when verification will occur, the contents of a verification report, and the procedures for verification.

(b) *In general.* (1) Subject to paragraph (b)(4) of this section, the Secretary will verify factual information upon which the Secretary relies in:

(i) A final determination in a continuation of a previously suspended countervailing duty investigation (section 704(g) of the Act), countervailing duty investigation, continuation of a previously suspended antidumping investigation (section 705(a) of the Act), or antidumping investigation;

(ii) The final results of an expedited antidumping review;

(iii) A revocation under section 751(d) of the Act;

(iv) The final results of an administrative review, new shipper review, or changed circumstances review, if the Secretary decides that good cause for verification exists; and

(v) The final results of an administrative review if:

(A) A domestic interested party, not later than 100 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) The Secretary may verify factual information upon which the Secretary relies in a proceeding or a segment of a proceeding not specifically provided for in paragraph (b)(1) of this section.

(3) If the Secretary decides that, because of the large number of exporters or producers 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.

(4) The Secretary may conduct verification of a person if that person agrees to verification and the Secretary notifies the government of the affected country and that government does not object. If the person or the government objects to verification, the Secretary will not conduct verification and may disregard any or all information submitted by the person in favor of use of the facts available under section 776 of the Act and § 351.308.

(c) *Verification report.* The Secretary will report the methods, procedures, and results of a verification under this

section prior to making a final determination in an investigation or issuing final results in a review.

(d) *Procedures for verification.* The Secretary will notify the government of the affected country that employees of the Department will visit with the persons listed below in order to verify the accuracy and completeness of submitted factual information. The notification will, where practicable, identify any member of the verification team who is not an officer of the U.S. Government. As part of the verification, employees of the Department will request access to all files, records, and personnel which the Secretary considers relevant to factual information submitted of:

(1) Producers, exporters, or importers;

(2) Persons affiliated with the persons listed in paragraph (d)(1) of this section, where applicable;

(3) Unaffiliated purchasers, or

(4) The government of the affected country as part of verification in a countervailing duty proceeding.

§ 351.308 Determinations on the basis of the facts available.

(a) *Introduction.* The Secretary may make determinations on the basis of the facts available whenever necessary information is not available on the record, an interested party or any other person withholds or fails to provide information requested in a timely manner and in the form required or significantly impedes a proceeding, or the Secretary is unable to verify submitted information. If the Secretary finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Secretary may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. This section lists some of the sources of information upon which the Secretary may base an adverse inference and explains the actions the Secretary will take with respect to corroboration of information.

(b) *In general.* The Secretary may make a determination under the Act and this part based on the facts otherwise available in accordance with section 776(a) of the Act.

(c) *Adverse Inferences.* For purposes of section 776(b) of the Act, an adverse inference may include reliance on:

(1) Secondary information, such as information derived from:

(i) The petition;

(ii) A final determination in a countervailing duty investigation or an antidumping investigation;

(iii) Any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or

(2) Any other information placed on the record.

(d) *Corroboration of secondary information.* Under section 776(c) of the Act, when the Secretary relies on secondary information, the Secretary will, to the extent practicable, corroborate that information from independent sources that are reasonably at the Secretary's disposal. Independent sources may include, but are not limited to, published price lists, official import statistics and customs data, and information obtained from interested parties during the instant investigation or review. Corroborate means that the Secretary will examine whether the secondary information to be used has probative value. The fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question.

(e) *Use of certain information.* In reaching a determination under the Act and this part, the Secretary will not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the Secretary if the conditions listed under section 782(e) of the Act are met.

(f) *Use of facts available in a sunset review.* Where the Secretary determines to issue final results of sunset review on the basis of facts available, the Secretary normally will rely on:

(1) Calculated countervailing duty rates or dumping margins, as applicable, from prior Department determinations; and

(2) Information contained in parties' substantive responses to the Notice of Initiation filed under §351.218(d)(3), consistent with section 752(b) or 752(c) of the Act, as applicable.

[62 FR 27379, May 19, 1997, as amended at 63 FR 13524, Mar. 20, 1998]

§ 351.309 Written argument.

(a) *Introduction.* Written argument may be submitted during the course of an antidumping or countervailing duty proceeding. This section sets forth the time limits for submission of case and rebuttal briefs and provides guidance on what should be contained in these documents.

(b) *Written argument*—(1) *In general.* In making the final determination in a countervailing duty investigation or antidumping investigation or the final results of an administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review, the Secretary will consider written arguments in case or rebuttal briefs filed within the time limits in this section.

(2) *Written argument on request.* Notwithstanding paragraph (b)(1) of this section, the Secretary may request written argument on any issue from any person or U.S. Government agency at any time during a proceeding.

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

(i) For a final determination in a countervailing duty investigation or antidumping investigation, or for the final results of a full sunset review, 50 days after the date of publication of the preliminary determination or results of review, as applicable, unless the Secretary alters the time limit;

(ii) For the final results of an administrative review, new shipper review, changed circumstances review, or section 762 review, 30 days after the date of publication of the preliminary results of review, unless the Secretary alters the time limit; or

(iii) For the final results of an expedited antidumping review, Article 8 violation review, Article 4/ Article 7 review, or section 753 review, a date specified by the Secretary.

(2) The case brief must present 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. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

(d) *Rebuttal brief.* (1) Any interested party or U.S. Government agency may submit a ''rebuttal brief'' within five days after the time limit for filing the case brief, unless the Secretary alters this time limit.

(2) The rebuttal brief may respond only to arguments raised in case briefs and should identify the arguments to which it is responding. As part of the rebuttal brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

(e) *Comments on adequacy of response and appropriateness of expedited sunset review*—(i) *In general.* Where the Secretary determines that respondent interested parties provided inadequate response to a Notice of Initiation (*see* §351.218(e)(1)(ii)) and has notified the International Trade Commission as such under §351.218(e)(1)(ii)(C), interested parties (and industrial users and consumer organizations) that submitted a complete substantive response to the Notice of Initiation under §351.218(d)(3) may file comments on whether an expedited sunset review under section 751(c)(3)(B) of the Act and §351.218(e)(1)(ii)(B) or 351.218(e)(1)(ii)(C) is appropriate based on the adequacy of responses to the notice of initiation. These comments may not include any new factual information or evidence (such as supplementation of a substantive response to the notice of initiation) and are limited to five pages.

(ii) *Time limit for filing comments.* Comments on adequacy of response and appropriateness of expedited sunset review must be filed not later than 70 days after the date publication in the FEDERAL REGISTER of the notice of initiation.

[62 FR 27379, May 19, 1997, as amended at 63 FR 13524, Mar. 20, 1998]

§ 351.310 Hearings.

(a) *Introduction.* This section sets forth the procedures for requesting a hearing, indicates that the Secretary may consolidate hearings, and explains when the Secretary may hold closed hearing sessions.

(b) *Pre-hearing conference.* The Secretary may conduct a telephone prehearing conference with representatives of interested parties to facilitate the conduct of the hearing.

(c) *Request for hearing.* Any interested party may request that the Secretary hold a public hearing on arguments to be raised in case or rebuttal briefs within 30 days after the date of publication of the preliminary determination or preliminary results of review, unless the Secretary alters this time limit, or in a proceeding where the Secretary will not issue a preliminary determination, not later than a date specified by the Secretary. To the extent practicable, a party requesting a hearing must 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.

(d) *Hearings in general.* (1) If an interested party submits a request under paragraph (c) 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 antidumping review), unless the Secretary alters the date. Ordinarily, the hearing will be held two days after the scheduled date for submission of rebuttal briefs.

(2) The hearing is not subject to 5 U.S.C. §§ 551–559, and § 702 (Administrative Procedure Act). Witness testimony, if any, will not be under oath or subject to cross-examination by another interested party or witness. During the hearing, the chair may question any person or witness and may request persons to present additional written argument.

(e) *Consolidated hearings.* At the Secretary's discretion, the Secretary may consolidate hearings in two or more cases.

(f) *Closed hearing sessions.* An interested party may request a closed session of the hearing no later than the date the case briefs are due in order to address limited issues during the course of the hearing. The requesting party must identify the subjects to be discussed, specify the amount of time requested, and justify the need for a closed session with respect to each subject. If the Secretary approves the request for a closed session, only authorized applicants and other persons authorized by the regulations may be present for the closed session (*see* § 351.305).

(g) *Transcript of hearing.* 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.

§ 351.311 Countervailable subsidy practice discovered during investigation or review.

(a) *Introduction.* During the course of a countervailing duty investigation or review, Department officials may discover or receive notice of a practice that appears to provide a countervailable subsidy. This section explains when the Secretary will examine such a practice.

(b) *Inclusion in proceeding.* If during a countervailing duty investigation or a countervailing duty administrative review the Secretary discovers a practice that appears to provide a countervailable subsidy with respect to the subject merchandise and the practice was not alleged or examined in the proceeding, or if, pursuant to section 775 of the Act, the Secretary receives notice from the United States Trade Representative that a subsidy or subsidy program is in violation of Article 8 of the Subsidies Agreement, the Secretary will examine the practice, subsidy, or subsidy program if the Secretary concludes that sufficient time remains before the scheduled date for the final determination or final results of review.

(c) *Deferral of examination.* If the Secretary concludes that insufficient time

remains before the scheduled date for the final determination or final results of review to examine the practice, subsidy, or subsidy program described in paragraph (b) 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, subsidy, or subsidy program; or

(2) During an investigation or review, defer consideration of the newly discovered practice, subsidy, or subsidy program until a subsequent administrative review, if any.

(d) *Notice.* The Secretary will notify the parties to the proceeding of any practice the Secretary discovers, or any subsidy or subsidy program with respect to which the Secretary receives notice from the United States Trade Representative, and whether or not it will be included in the then ongoing proceeding.

§ 351.312 Industrial users and consumer organizations.

(a) *Introduction.* The URAA provides for opportunity for comment by consumer organizations and industrial users on matters relevant to a particular determination of dumping, subsidization, or injury. This section indicates under what circumstances such persons may submit relevant information and argument.

(b) *Opportunity to submit relevant information and argument.* In an antidumping or countervailing duty proceeding under title VII of the Act and this part, a industrial user of the subject merchandise or a representative consumer organization, as described in section 777(h) of the Act, may submit relevant factual information and written argument to the Department under paragraphs (d)(3)(ii), and (d)(3)(vi), and (d)(4) of § 351.218, paragraphs (b), (c)(1), and (c)(3) of § 351.301, and paragraphs (c), (d), and (e) of § 351.309 concerning dumping or a countervailing subsidy. All such submissions must be filed in accordance with § 351.303.

(c) *Business proprietary information.* Persons described in paragraph (b) of this section may request business proprietary treatment of information under § 351.304, but will not be granted access under § 351.305 to business proprietary information submitted by other persons.

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Subpart D—Calculation of Export Price, Constructed Export Price, Fair Value, and Normal Value

§ 351.401 In general.

(a) *Introduction.* In general terms, an antidumping analysis involves a comparison of export price or constructed export price in the United States with normal value in the foreign market. This section establishes certain general rules that apply to the calculation of export price, constructed export price and normal value. (*See* section 772, section 773, and section 773A of the Act.)

(b) *Adjustments in general.* In making adjustments to export price, constructed export price, or normal value, the Secretary will adhere to the following principles:

(1) The interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment; and

(2) The Secretary will not double-count adjustments.

(c) *Use of price net of price adjustments.* In calculating export price, constructed export price, and normal value (where normal value is based on price), the Secretary will use a price that is net of any price adjustment, as defined in § 351.102(b), that is reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable).

(d) *Delayed payment or pre-payment of expenses.* Where cost is the basis for determining the amount of an adjustment to export price, constructed export price, or normal value, the Secretary will not factor in any delayed payment or pre-payment of expenses by the exporter or producer.

(e) *Adjustments for movement expenses*—(1) *Original place of shipment.* In making adjustments for movement expenses to establish export price or

constructed export price under section 772(c)(2)(A) of the Act, or normal value under section 773(a)(6)(B)(ii) of the Act, the Secretary normally will consider the production facility as being the ''original place of shipment. However, where the Secretary bases export price, constructed export price, or normal value on a sale by an unaffiliated reseller, the Secretary may treat the original place from which the reseller shipped the merchandise as the ''original place of shipment.''

(2) *Warehousing.* The Secretary will consider warehousing expenses that are incurred after the subject merchandise or foreign like product leaves the original place of shipment as movement expenses.

(f) *Treatment of affiliated producers in antidumping proceedings*—(1) *In general.* In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.

(2) *Significant potential for manipulation.* In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:

(i) The level of common ownership;

(ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and

(iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

(g) *Allocation of expenses and price adjustments*—(1) *In general.* The Secretary may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided the Secretary is satisfied that the allocation method used does not cause inaccuracies or distortions.

(2) *Reporting allocated expenses and price adjustments.* Any party seeking to report an expense or a price adjustment on an allocated basis must demonstrate to the Secretary's satisfaction that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology used does not cause inaccuracies or distortions.

(3) *Feasibility.* In determining the feasibility of transaction-specific reporting or whether an allocation is calculated on as specific a basis as is feasible, the Secretary will take into account the records maintained by the party in question in the ordinary course of its business, as well as such factors as the normal accounting practices in the country and industry in question and the number of sales made by the party during the period of investigation or review.

(4) *Expenses and price adjustments relating to merchandise not subject to the proceeding.* The Secretary will not reject an allocation method solely because the method includes expenses incurred, or price adjustments made, with respect to sales of merchandise that does not constitute subject merchandise or a foreign like product (whichever is applicable).

(h) *Treatment of subcontractors (''tolling'' operations).* The Secretary will not consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor does not acquire ownership, and does not control the relevant sale, of the subject merchandise or foreign like product.

(i) *Date of sale.* In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

§ 351.402 Calculation of export price and constructed export price; reimbursement of antidumping and countervailing duties.

(a) *Introduction.* In order to establish export price, constructed export price, and normal value, the Secretary must make certain adjustments to the price to the unaffiliated purchaser (often called the ''starting price'') in both the United States and foreign markets. This regulation clarifies how the Secretary will make certain of the adjustments to the starting price in the United States that are required by section 772 of the Act.

(b) *Additional adjustments to constructed export price.* In establishing constructed export price under section 772(d) of the Act, the Secretary will make adjustments for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid. The Secretary will not make an adjustment for any expense that is related solely to the sale to an affiliated importer in the United States, although the Secretary may make an adjustment to normal value for such expenses under section 773(a)(6)(C)(iii) of the Act.

(c) *Special rule for merchandise with value added after importation*—(1) *Merchandise imported by affiliated persons.* In applying section 772(e) of the Act, merchandise imported by and value added by a person affiliated with the exporter or producer includes merchandise imported and value added for the account of such an affiliated person.

(2) *Estimation of value added.* The Secretary normally will determine that the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise if the Secretary estimates the value added to be at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States. The Secretary normally will estimate the value added based on the difference between the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the price paid for the subject merchandise by the affiliated person. The Secretary normally will base this determination on averages of the prices and the value added to the subject merchandise.

(3) *Determining dumping margins.* For purposes of determining dumping margins under paragraphs (1) and (2) of section 772(e) of the Act, the Secretary may use the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons.

(d) *Special rule for determining profit.* This paragraph sets forth rules for calculating profit in establishing constructed export price under section 772(f) of the Act.

(1) *Basis for total expenses and total actual profit.* In calculating total expenses and total actual profit, the Secretary normally will use the aggregate of expenses and profit for all subject merchandise sold in the United States and all foreign like products sold in the exporting country, including sales that have been disregarded as being below the cost of production. (*See* section 773(b) of the Act (sales at less than cost of production).)

(2) *Use of financial reports.* For purposes of determining profit under section 772(d)(3) of the Act, the Secretary may rely on any appropriate financial reports, including public, audited financial statements, or equivalent financial reports, and internal financial reports prepared in the ordinary course of business.

(3) *Voluntary reporting of costs of production.* The Secretary will not require the reporting of costs of production solely for purposes of determining the amount of profit to be deducted from the constructed export price. The Secretary will base the calculation of profit on costs of production if such costs are reported voluntarily by the date established by the Secretary, and provided that it is practicable to do so and the costs of production are verifiable.

(e) *Treatment of payments between affiliated persons.* Where a person affiliated with the exporter or producer incurs any of the expenses deducted from constructed export price under section 772(d) of the Act and is reimbursed for such expenses by the exporter, producer or other affiliate, the Secretary normally will make an adjustment

based on the actual cost to the affiliated person. If the Secretary is satisfied that information regarding the actual cost to the affiliated person is unavailable to the exporter or producer, the Secretary may determine the amount of the adjustment on any other reasonable basis, including the amount of the reimbursement to the affiliated person if the Secretary is satisfied that such amount reflects the amount usually paid in the market under consideration.

(f) *Reimbursement of antidumping duties and countervailing duties*—(1) *In general.* (i) In calculating the export price (or the constructed export price), the Secretary will deduct the amount of any antidumping duty or countervailing duty which the exporter or producer:

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

(B) Reimbursed to the importer.

(ii) The Secretary will not deduct the amount of any antidumping duty or countervailing duty paid or reimbursed if the exporter or producer granted to the importer before initiation of the antidumping investigation in question a warranty of nonapplicability of antidumping duties or countervailing duties with respect to subject merchandise which was:

(A) Sold before the date of publication of the Secretary's order applicable to the merchandise in question; and

(B) Exported before the date of publication of the Secretary's final antidumping determination.

(iii) Ordinarily, under paragraph (f)(1)(i) of this section, the Secretary will deduct the amount reimbursed only once in the calculation of the export price (or constructed export price).

(2) *Certificate.* The importer must 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 or countervailing duties assessed upon the following importations of (commodity) from (country): (List entry numbers) which have been purchased on or after (date of publication of antidumping 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).

(3) *Presumption.* The Secretary may presume from an importer's failure to file the certificate required in paragraph (f)(2) of this section that the exporter or producer paid or reimbursed the antidumping duties or countervailing duties.

§ 351.403 Sales used in calculating normal value; transactions between affiliated parties.

(a) *Introduction.* This section clarifies when the Secretary may use offers for sale in determining normal value. Additionally, this section clarifies the authority of the Secretary to use sales to or through an affiliated party as a basis for normal value. (*See* section 773(a)(5) of the Act (indirect sales or offers for sale).)

(b) *Sales and offers for sale.* In calculating normal value, the Secretary normally will consider offers for sale only in the absence of sales and only if the Secretary concludes that acceptance of the offer can be reasonably expected.

(c) *Sales to an affiliated party.* If an exporter or producer sold the foreign like product to an affiliated party, the Secretary may calculate normal value based on that sale only if satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller.

(d) *Sales through an affiliated party.* If an exporter or producer sold the foreign like product through an affiliated party, the Secretary may calculate normal value based on the sale by such affiliated party. However, the Secretary normally will not calculate normal value based on the sale by an affiliated party if sales of the foreign like product by an exporter or producer to affiliated parties account for less than five percent of the total value (or quantity) of the exporter's or producer's sales of the foreign like product in the market in question or if sales to the affiliated party are comparable, as defined in paragraph (c) of this section.

§ 351.404 Selection of the market to be used as the basis for normal value.

(a) *Introduction.* Although in most circumstances sales of the foreign like product in the home market are the most appropriate basis for determining normal value, section 773 of the Act also permits use of sales to a third country or constructed value as the basis for normal value. This section clarifies the rules for determining the basis for normal value.

(b) *Determination of viable market*—(1) *In general.* The Secretary will consider the exporting country or a third country as constituting a viable market if the Secretary is satisfied that sales of the foreign like product in that country are of sufficient quantity to form the basis of normal value.

(2) *Sufficient quantity.* ''Sufficient quantity'' normally means that the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold by an exporter or producer in a country is 5 percent or more of the aggregate quantity (or value) of its sales of the subject merchandise to the United States.

(c) *Calculation of price-based normal value in viable market*—(1) *In general.* Subject to paragraph (c)(2) of this section:

(i) If the exporting country constitutes a viable market, the Secretary will calculate normal value on the basis of price in the exporting country (*see* section 773(a)(1)(B)(i) of the Act (price used for determining normal value)); or

(ii) If the exporting country does not constitute a viable market, but a third country does constitute a viable market, the Secretary may calculate normal value on the basis of price to a third country (*see* section 773(a)(1)(B)(ii) of the Act (use of third country prices in determining normal value)).

(2) *Exception.* The Secretary may decline to calculate normal value in a particular market under paragraph (c)(1) of this section if it is established to the satisfaction of the Secretary that:

(i) In the case of the exporting country or a third country, a particular market situation exists that does not permit a proper comparison with the export price or constructed export price (*see* section 773(a)(1)(B)(ii)(III) or section 773(a)(1)(C)(iii) of the Act); or

(ii) In the case of a third country, the price is not representative (*see* section 773(a)(1)(B)(ii)(I) of the Act).

(d) *Allegations concerning market viability and the basis for determining a price-based normal value.* In an antidumping investigation or review, allegations regarding market viability or the exceptions in paragraph (c)(2) of this section, must be filed, with all supporting factual information, in accordance with § 351.301(d)(1).

(e) *Selection of third country.* For purposes of calculating normal value based on prices in a third country, where prices in more than one third country satisfy the criteria of section 773(a)(1)(B)(ii) of the Act and this section, the Secretary generally will select the third country based on the following criteria:

(1) The foreign like product exported to a particular third country is more similar to the subject merchandise exported to the United States than is the foreign like product exported to other third countries;

(2) The volume of sales to a particular third country is larger than the volume of sales to other third countries;

(3) Such other factors as the Secretary considers appropriate.

(f) *Third country sales and constructed value.* The Secretary normally will calculate normal value based on sales to a third country rather than on constructed value if adequate information is available and verifiable (*see* section 773(a)(4) of the Act (use of constructed value)).

§ 351.405 Calculation of normal value based on constructed value.

(a) *Introduction.* In certain circumstances, the Secretary may determine normal value by constructing a value based on the cost of manufacture, selling general and administrative expenses, and profit. The Secretary may use constructed value as the basis for normal value where: neither the home market nor a third country market is viable; sales below the cost of production are disregarded; sales outside the ordinary course of

trade, or sales the prices of which are otherwise unrepresentative, are disregarded; sales used to establish a fictitious market are disregarded; no contemporaneous sales of comparable merchandise are available; or in other circumstances where the Secretary determines that home market or third country prices are inappropriate. (*See* section 773(e) and section 773(f) of the Act.) This section clarifies the meaning of certain terms relating to constructed value.

(b) *Profit and selling, general, and administrative expenses.* In determining the amount to be added to constructed value for profit and for selling, general, and administrative expenses, the following rules will apply:

(1) Under section 773(e)(2)(A) of the Act, ''foreign country'' means the country in which the merchandise is produced or a third country selected by the Secretary under § 351.404(e), as appropriate.

(2) Under section 773(e)(2)(B) of the Act, ''foreign country'' means the country in which the merchandise is produced.

§ 351.406 Calculation of normal value if sales are made at less than cost of production.

(a) *Introduction.* In determining normal value, the Secretary may disregard sales of the foreign like product made at prices that are less than the cost of production of that product. However, such sales will be disregarded only if they are made within an extended period of time, in substantial quantities, and are not at prices which permit recovery of costs within a reasonable period of time. (*See* section 773(b) of the Act.) This section clarifies the meaning of the term ''extended period of time'' as used in the Act.

(b) *Extended period of time.* The ''extended period of time'' under section 773(b)(1)(A) of the Act normally will coincide with the period in which the sales under consideration for the determination of normal value were made.

§ 351.407 Calculation of constructed value and cost of production.

(a) *Introduction.* This section sets forth certain rules that are common to the calculation of constructed value and the cost of production. (*See* section 773(f) of the Act.)

(b) *Determination of value under the major input rule.* For purposes of section 773(f)(3) of the Act, the Secretary normally will determine the value of a major input purchased from an affiliated person based on the higher of:

(1) The price paid by the exporter or producer to the affiliated person for the major input;

(2) The amount usually reflected in sales of the major input in the market under consideration; or

(3) The cost to the affiliated person of producing the major input.

(c) *Allocation of costs.* In determining the appropriate method for allocating costs among products, the Secretary may take into account production quantities, relative sales values, and other quantitative and qualitative factors associated with the manufacture and sale of the subject merchandise and the foreign like product.

(d) *Startup costs.* (1) In identifying startup operations under section 773(f)(1)(C)(ii) of the Act:

(i) ''New production facilities'' includes the substantially complete retooling of an existing plant. Substantially complete retooling involves the replacement of nearly all production machinery or the equivalent rebuilding of existing machinery.

(ii) A ''new product'' is one requiring substantial additional investment, including products which, though sold under an existing nameplate, involve the complete revamping or redesign of the product. Routine model year changes will not be considered a new product.

(iii) Mere improvements to existing products or ongoing improvements to existing facilities will not be considered startup operations.

(iv) An expansion of the capacity of an existing production line will not qualify as a startup operation unless the expansion constitutes such a major undertaking that it requires the construction of a new facility and results in a depression of production levels due to technical factors associated with the initial phase of commercial production of the expanded facilities.

(2) In identifying the end of the start-up period under clauses (ii) and (iii) of section 773(f)(1)(C) of the Act:

(i) The attainment of peak production levels will not be the standard for identifying the end of the startup period, because the startup period may end well before a company achieves optimum capacity utilization.

(ii) The startup period will not be extended to cover improvements and cost reductions that may occur over the entire life cycle of a product.

(3) In determining when a producer reaches commercial production levels under section 773(f)(1)(C)(ii) of the Act:

(i) The Secretary will consider the actual production experience of the merchandise in question, measuring production on the basis of units processed.

(ii) To the extent necessary, the Secretary will examine factors in addition to those specified in section 773(f)(1)(C)(ii) of the Act, including historical data reflecting the same producer's or other producers' experiences in producing the same or similar products. A producer's projections of future volume or cost will be accorded little weight.

(4) In making an adjustment for startup operations under section 773(f)(1)(C)(iii) of the Act:

(i) The Secretary will determine the duration of the startup period on a case-by-case basis.

(ii) The difference between actual costs and the costs of production calculated for startup costs will be amortized over a reasonable period of time subsequent to the startup period over the life of the product or machinery, as appropriate.

(iii) The Secretary will consider unit production costs to be items such as depreciation of equipment and plant, labor costs, insurance, rent and lease expenses, material costs, and factory overhead. The Secretary will not consider sales expenses, such as advertising costs, or other general and administrative or non-production costs (such as general research and development costs), as startup costs.

§ 351.408 Calculation of normal value of merchandise from nonmarket economy countries.

(a) *Introduction.* In identifying dumping from a nonmarket economy country, the Secretary normally will calculate normal value by valuing the nonmarket economy producers' factors of production in a market economy country. (*See* section 773(c) of the Act.) This section clarifies when and how this special methodology for nonmarket economies will be applied.

(b) *Economic Comparability.* In determining whether a country is at a level of economic development comparable to the nonmarket economy under section 773(c)(2)(B) or section 773(c)(4)(A) of the Act, the Secretary will place primary emphasis on *per capita* GDP as the measure of economic comparability.

(c) *Valuation of Factors of Production.* For purposes of valuing the factors of production, general expenses, profit, and the cost of containers, coverings, and other expenses (referred to collectively as ''factors'') under section 773(c)(1) of the Act the following rules will apply:

(1) *Information used to value factors.* The Secretary normally will use publicly available information to value factors. However, where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary normally will use the price paid to the market economy supplier. In those instances where a portion of the factor is purchased from a market economy supplier and the remainder from a nonmarket economy supplier, the Secretary normally will value the factor using the price paid to the market economy supplier.

(2) *Valuation in a single country.* Except for labor, as provided in paragraph (d)(3) of this section, the Secretary normally will value all factors in a single surrogate country.

(3) *Labor.* For labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation

will be based on current data, and will be made available to the public.

(4) *Manufacturing overhead, general expenses, and profit.* For manufacturing overhead, general expenses, and profit, the Secretary normally will use nonproprietary information gathered from producers of identical or comparable merchandise in the surrogate country.

§ 351.409 Differences in quantities.

(a) *Introduction.* Because the quantity of merchandise sold may affect the price, in comparing export price or constructed export price with normal value, the Secretary will make a reasonable allowance for any difference in quantities to the extent the Secretary is satisfied that the amount of any price differential (or lack thereof) is wholly or partly due to that difference in quantities. (*See* section 773(a)(6)(C)(i) of the Act.)

(b) *Sales with quantity discounts in calculating normal value.* The Secretary normally will calculate normal value based on sales with quantity discounts only if:

(1) During the period examined, or during a more representative period, the exporter or producer granted quantity discounts of at least the same magnitude on 20 percent or more of sales of the foreign like product for the relevant country; or

(2) The exporter or 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 normal value.* If the exporter or producer does not satisfy the conditions of paragraph (b) of this section, the Secretary will calculate normal value based on weighted-average prices that include sales at a discount.

(d) *Price lists.* In determining whether a discount has been granted, the existence or lack of a published price list reflecting such a discount will not be controlling. Ordinarily, the Secretary will give weight to a price list only if, in the line of trade and market under consideration, the exporter or producer demonstrates that it has adhered to its price list.

(e) *Relationship to level of trade adjustment.* If adjustments are claimed for both differences in quantities and differences in level of trade, the Secretary will not make an adjustment for differences in quantities unless the Secretary is satisfied that the effect on price comparability of differences in quantities has been identified and established separately from the effect on price comparability of differences in the levels of trade.

§ 351.410 Differences in circumstances of sale

(a) *Introduction.* In calculating normal value the Secretary may make adjustments to account for certain differences in the circumstances of sales in the United States and foreign markets. (*See* section 773(a)(6)(C)(iii) of the Act.) This section clarifies certain terms used in the statute regarding circumstances of sale adjustments and describes the adjustment when commissions are paid only in one market.

(b) *In general.* With the exception of the allowance described in paragraph (e) of this section concerning commissions paid in only one market, the Secretary will make circumstances of sale adjustments under section 773(a)(6)(C)(iii) of the Act only for direct selling expenses and assumed expenses.

(c) *Direct selling expenses.* ''Direct selling expenses'' are expenses, such as commissions, credit expenses, guarantees, and warranties, that result from, and bear a direct relationship to, the particular sale in question.

(d) *Assumed expenses.* Assumed expenses are selling expenses that are assumed by the seller on behalf of the buyer, such as advertising expenses.

(e) *Commissions paid in one market.* 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 considerations, and no commission is paid in the other market under consideration. 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.

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

§ 351.411 Differences in physical characteristics.

(a) *Introduction.* In comparing United States sales with foreign market sales, the Secretary may determine that the merchandise sold in the United States does not have the same physical characteristics as the merchandise sold in the foreign market, and that the difference has an effect on prices. In calculating normal value, the Secretary will make a reasonable allowance for such differences. (*See* section 773(a)(6)(C)(ii) of the Act.)

(b) *Reasonable allowance.* In deciding what is a reasonable allowance for differences in physical characteristics, the Secretary will consider only differences in variable costs associated with the physical differences. Where appropriate, the Secretary 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.

§ 351.412 Levels of trade; adjustment for difference in level of trade; constructed export price offset.

(a) *Introduction.* In comparing United States sales with foreign market sales, the Secretary may determine that sales in the two markets were not made at the same level of trade, and that the difference has an effect on the comparability of the prices. The Secretary is authorized to adjust normal value to account for such a difference. (*See* section 773(a)(7) of the Act.)

(b) *Adjustment for difference in level of trade.* The Secretary will adjust normal value for a difference in level of trade if:

(1) The Secretary calculates normal value at a different level of trade from the level of trade of the export price or the constructed export price (whichever is applicable); and

(2) The Secretary determines that the difference in level of trade has an effect on price comparability.

(c) *Identifying levels of trade and differences in levels of trade*—(1) *Basis for identifying levels of trade.* The Secretary will identify the level of trade based on:

(i) In the case of export price, the starting price;

(ii) In the case of constructed export price, the starting price, as adjusted under section 772(d) of the Act; and

(iii) In the case of normal value, the starting price or constructed value.

(2) *Differences in levels of trade.* The Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing.

(d) *Effect on price comparability*—(1) *In general.* The Secretary will determine that a difference in level of trade has an effect on price comparability only if it is established to the satisfaction of the Secretary that there is a pattern of consistent price differences between sales in the market in which normal value is determined:

(i) At the level of trade of the export price or constructed export price (whichever is appropriate); and

(ii) At the level of trade at which normal value is determined.

(2) *Relevant sales.* Where possible, the Secretary will make the determination under paragraph (d)(1) of this section on the basis of sales of the foreign like product by the producer or exporter. Where this is not possible, the Secretary may use sales of different or broader product lines, sales by other companies, or any other reasonable basis.

(e) *Amount of adjustment.* The Secretary normally will calculate the amount of a level of trade adjustment by:

(1) Calculating the weighted-averages of the prices of sales at the two levels of trade identified in paragraph (d), after making any other adjustments to

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

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

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

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

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

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

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

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

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

§ 351.413 Disregarding insignificant adjustments.

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

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

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

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

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

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

prices) of individual transactions for comparable merchandise.

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

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

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

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

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

(e) *Application of the average-to-transaction method*—(1) *In general.* In applying the average-to-transaction method in a review, when normal value is based on the weighted average of sales of the foreign like product, the Secretary will limit the averaging of such prices to sales incurred during the contemporaneous month.

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

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

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

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

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

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

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

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

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

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

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

§ 351.415 Conversion of currency.

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

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

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

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

Subpart E—Identification and Measurement of Countervailable Subsidies

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

§ 351.501 Scope.

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

§ 351.502 Specificity of domestic subsidies.

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

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

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

(1) The subsidy programs have the same purpose;

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

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

(4) The subsidy programs were linked at inception.

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

(e) *Subsidies to small-and medium-sized businesses.* The Secretary will not regard a subsidy as being specific under section 771(5A)(D) of the Act solely because the subsidy is limited to small firms or small-and medium-sized firms.

(f) *Disaster relief.* The Secretary will not regard disaster relief as being specific under section 771(5A)(D) of the Act if such relief constitutes general assistance available to anyone in the area affected by the disaster.

§ 351.503 Benefit.

(a) *Specific rules.* In the case of a government program for which a specific rule for the measurement of a benefit is contained in this subpart E, the Secretary will measure the extent to which a financial contribution (or income or price support) confers a benefit as provided in that rule. For example, § 351.504(a) prescribes the specific rule for measurement of the benefit of grants.

(b) *Other subsidies*—(1) *In general.* For other government programs, the Secretary normally will consider a benefit to be conferred where a firm pays less for its inputs (*e.g.*, money, a good, or a service) than it otherwise would pay in the absence of the government program, or receives more revenues than it otherwise would earn.

(2) *Exception.* Paragraph (b)(1) of this section is not intended to limit the ability of the Secretary to impose countervailing duties when the facts of a particular case establish that a financial contribution (or income or price support) has conferred a benefit, even if that benefit does not take the form of a reduction in input costs or an enhancement of revenues. When paragraph (b)(1) of this section is not applicable, the Secretary will determine whether a benefit is conferred by examining whether the alleged program or practice has common or similar elements to the four illustrative examples in sections 771(5)(E)(i) through (iv) of the Act.

(c) *Distinction from effect of subsidy.* In determining whether a benefit is conferred, the Secretary is not required to consider the effect of the government action on the firm's performance, including its prices or output, or how the firm's behavior otherwise is altered.

(d) *Varying financial contribution levels*—(1) *In general.* Where a government program provides varying levels of financial contributions based on different eligibility criteria, and one or more of such levels is not specific within the meaning of § 351.502, a benefit is conferred to the extent that a firm receives a greater financial contribution than the financial contributions provided at a non-specific level under the program. The preceding sentence shall apply only to the extent the Secretary determines that the varying levels of financial contributions are set forth in a statute, decree, regulation, or other official act; that the levels are clearly delineated and identifiable; and that the firm would have been eligible for the non-specific level of contributions.

(2) *Exception.* Paragraph (d)(1) of this section shall not apply where the statute specifies a commercial test for determining the benefit.

(e) *Tax consequences.* In calculating the amount of a benefit, the Secretary will not consider the tax consequences of the benefit.

§ 351.504 Grants.

(a) *Benefit.* In the case of a grant, a benefit exists in the amount of the grant.

(b) *Time of receipt of benefit.* In the case of a grant, the Secretary normally will consider a benefit as having been received on the date on which the firm received the grant.

(c) *Allocation of a grant to a particular time period.* The Secretary will allocate the benefit from a grant to a particular time period in accordance with § 351.524.

§ 351.505 Loans.

(a) *Benefit*—(1) *In general.* In the case of a loan, a benefit exists to the extent that the amount a firm pays on the government-provided loan is less than the amount the firm would pay on a comparable commercial loan(s) that the firm could actually obtain on the market. *See* section 771(5)(E)(ii) of the Act. In making the comparison called for in the preceding sentence, the Secretary normally will rely on effective interest rates.

(2) *''Comparable commercial loan'' defined*—(i) *''Comparable'' defined.* In selecting a loan that is ''comparable'' to the government-provided loan, the Secretary normally will place primary emphasis on similarities in the structure of the loans (*e.g.*, fixed interest rate v. variable interest rate), the maturity of the loans (*e.g.*, short-term v. long-term), and the currency in which the loans are denominated.

(ii) *''Commercial'' defined.* In selecting a ''commercial'' loan, the Secretary normally will use a loan taken out by the firm from a commercial lending institution or a debt instrument issued by the firm in a commercial market. Also, the Secretary will treat a loan from a government-owned bank as a commercial loan, unless there is evidence that the loan from a government-owned bank is provided on non-commercial terms or at the direction of the government. However, the Secretary will not consider a loan provided under a government program, or a loan provided by a government-owned special purpose bank, to be a commercial loan for purposes of selecting a loan to compare with a government-provided loan.

(iii) *Long-term loans.* In selecting a comparable loan, if the government-provided loan is a long-term loan, the Secretary normally will use a loan the terms of which were established during, or immediately before, the year in which the terms of the government-provided loan were established.

(iv) *Short-term loans.* In making the comparison required under paragraph (a)(1) of this section, if the government-provided loan is a short-term loan, the Secretary normally will use an annual average of the interest rates on comparable commercial loans during the year in which the government-provided loan was taken out, weighted by the principal amount of each loan. However, if the Secretary finds that interest rates fluctuated significantly during the period of investigation or review, the Secretary will use the most appropriate interest rate based on the circumstances presented.

(3) *''Could actually obtain on the market'' defined*—(i) *In general.* In selecting a comparable commercial loan that the recipient ''could actually obtain on the market,'' the Secretary normally will rely on the actual experience of the firm in question in obtaining comparable commercial loans for both short-term and long-term loans.

(ii) *Where the firm has no comparable commercial loans.* If the firm did not take out any comparable commercial loans during the period referred to in paragraph (a)(2)(iii) or (a)(2)(iv) of this section, the Secretary may use a national average interest rate for comparable commercial loans.

(iii) *Exception for uncreditworthy companies.* If the Secretary finds that a firm that received a government-provided long-term loan was uncreditworthy, as defined in paragraph (a)(4) of this section, the Secretary normally will calculate the interest rate to be used in making the comparison called for by paragraph (a)(1) of this section according to the following formula:

$$i_b = [(1 - q_n)(1 + i_f)^n / (1 - p_n)]^{1/n} - 1,$$

where:

n = the term of the loan;
i_b = the benchmark interest rate for uncreditworthy companies;
i_f = the long-term interest rate that would be paid by a creditworthy company;
p_n = the probability of default by an uncreditworthy company within n years; and
q_n = the probability of default by a creditworthy company within n years.

''Default'' means any missed or delayed payment of interest and/or principal, bankruptcy, receivership, or distressed exchange. For values of p_n, the Secretary will normally rely on the average cumulative default rates reported for the Caa to C-rated category of companies in Moody's study of historical default rates of corporate bond issuers. For values of q_n, the Secretary will normally rely on the average cumulative default rates reported for the Aaa to Baa-rated categories of companies in Moody's study of historical default rates of corporate bond issuers.

(4) *Uncreditworthiness*—(i) *In general.* The Secretary will consider a firm to be uncreditworthy if the Secretary determines that, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. The

Secretary will determine uncreditworthiness on a case-by-case basis, and may, in appropriate circumstances, focus its creditworthiness analysis on the project being financed rather than the company as a whole. In making the creditworthiness determination, the Secretary may examine, among other factors, the following:

(A) The receipt by the firm of comparable commercial long-term loans;

(B) The present and past financial health of the firm, as reflected in various financial indicators calculated from the firm's financial statements and accounts;

(C) The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow; and

(D) Evidence of the firm's future financial position, such as market studies, country and industry economic forecasts, and project and loan appraisals prepared prior to the agreement between the lender and the firm on the terms of the loan.

(ii) *Significance of long-term commercial loans.* In the case of firms not owned by the government, the receipt by the firm of comparable long-term commercial loans, unaccompanied by a government-provided guarantee, will normally constitute dispositive evidence that the firm is not uncreditworthy.

(iii) *Significance of prior subsidies.* In determining whether a firm is uncreditworthy, the Secretary will ignore current and prior subsidies received by the firm.

(iv) *Discount rate.* When the creditworthiness of a firm is considered in connection with the allocation of nonrecurring benefits, the Secretary will rely on information available in the year in which the government agreed to provide the subsidy conferring a non-recurring benefit.

(5) *Long-term variable rate loans*—(i) *In general.* In the case of a long-term variable rate loan, the Secretary normally will make the comparison called for by paragraph (a)(1) of this section by relying on a comparable commercial loan with a variable interest rate. The Secretary then will compare the variable interest rates on the comparable commercial loan and the government-provided loan for the year in which the terms of the government-provided loan were established. If the comparison shows that the interest rate on the government-provided loan was equal to or higher than the interest rate on the comparable commercial loan, the Secretary will not consider the government-provided loan as having conferred a benefit. If the comparison shows that the interest rate on the government-provided loan was lower, the Secretary will consider the government-provided loan as having conferred a benefit, and, if the other criteria for a countervailable subsidy are satisfied, will calculate the amount of the benefit in accordance with paragraph (c)(4) of this section.

(ii) *Exception.* If the Secretary is unable to make the comparison described in paragraph (a)(5)(i) of this section or if the comparison described in paragraph (a)(5)(i) of this section would yield an inaccurate measure of the benefit, the Secretary may modify the method described in paragraph (a)(5)(i) of this section.

(6) *Allegations*—(i) *Allegation of uncreditworthiness required.* Normally, the Secretary will not consider the uncreditworthiness of a firm absent a specific allegation by the petitioner that is supported by information establishing a reasonable basis to believe or suspect that the firm is uncreditworthy.

(ii) *Government-owned banks.* The Secretary will not investigate a loan provided by a government-owned bank absent a specific allegation that is supported by information reasonably available to petitioners indicating that:

(A) The loan meets the specificity criteria in accordance with section 771(5A) of the Act; and

(B) A benefit exists within the meaning of paragraph (a)(1) of this section.

(b) *Time of receipt of benefit.* In the case of loans described in paragraphs (c)(1), (c)(2), and (c)(4) of this section, the Secretary normally will consider a benefit as having been received in the year in which the firm otherwise would have had to make a payment on the comparable commercial loan. In the case of a loan described in paragraph

(c)(3) of this section, the Secretary normally will consider the benefit as having been received in the year in which the firm receives the proceeds of the loan.

(c) *Allocation of benefit to a particular time period*—(1) *Short-term loans.* The Secretary will allocate (expense) the benefit from a short-term loan to the year(s) in which the firm is due to make interest payments on the loan. In no event may the present value (in the year of receipt of the loan) of the amounts calculated under the preceding sentence exceed the principal of the loan.

(2) *Long-term fixed-rate loans with concessionary interest rates.* Except as provided in paragraph (c)(3) of this section, the Secretary normally will calculate the subsidy amount to be assigned to a particular year by calculating the difference in interest payments for that year, i.e., the difference between the interest paid by the firm in that year on the government-provided loan and the interest the firm would have paid on the comparison loan. However, in no event may the present value (in the year of receipt of the loan) of the amounts calculated under the preceding sentence exceed the principal of the loan.

(3) *Long-term fixed-rate loans with different repayment schedules*—(i) *Calculation of present value of benefit.* Where the government-provided loan and the loan to which it is compared under paragraph (a) of this section are both long-term, fixed-interest rate loans, but have different grace periods or maturities, or where the shapes of the repayment schedules differ, the Secretary will determine the total benefit by calculating the present value, in the year that repayment would begin on the comparable commercial loan, of the difference between the amount that the firm is to pay on the government-provided loan and the amount that the firm would have paid on the comparison loan. In no event may the total benefit calculated under the preceding sentence exceed the principal of the loan.

(ii) *Calculation of annual benefit.* With respect to the benefit calculated under paragraph (c)(3)(i) of this section, the Secretary will determine the portion of that benefit to be assigned to a particular year by using the formula set forth in § 351.524(d)(1) and the following parameters:

A_k = the amount countervailed in year k,
y = the present value of the benefit (*see* paragraph (c)(3)(i) of this section),
n = the number of years in the life of the loan,
d = the interest rate on the comparison loan selected under paragraph (a) of this section, and
k = the year of allocation, where the year that repayment would begin on the comparable commercial loan = 1.

(4) *Long-term variable interest rate loans.* In the case of a government-provided long-term variable-rate loan, the Secretary normally will determine the amount of the benefit attributable to a particular year by calculating the difference in payments for that year, *i.e.*, the difference between the amount paid by the firm in that year on the government-provided loan and the amount the firm would have paid on the comparison loan. However, in no event may the present value (in the year of receipt of the loan) of the amounts calculated under the preceding sentence exceed the principal of the loan.

(d) *Contingent liability interest-free loans.* (1) *Treatment as loans.* In the case of an interest-free loan, for which the repayment obligation is contingent upon the company taking some future action or achieving some goal in fulfillment of the loan's requirements, the Secretary normally will treat any balance on the loan outstanding during a year as an interest-free, short-term loan in accordance with paragraphs (a), (b), and (c)(1) of this section. However, if the event upon which repayment of the loan depends will occur at a point in time more than one year after the receipt of the contingent liability loan, the Secretary will use a long-term interest rate as the benchmark in accordance with paragraphs (a), (b), and (c)(2) of this section. In no event may the present value (in the year of receipt of the contingent liability loan) of the amounts calculated under this paragraph exceed the principal of the loan.

(2) *Treatment as grants.* If, at any point in time, the Secretary determines that the event upon which repayment depends is not a viable contingency, the Secretary will treat the outstanding balance of the loan as a grant received in the year in which this condition manifests itself.

§ 351.506 Loan guarantees.

(a) *Benefit*—(1) *In general.* In the case of a loan guarantee, a benefit exists to the extent that the total amount a firm pays for the loan with the government-provided guarantee is less than the total amount the firm would pay for a comparable commercial loan that the firm could actually obtain on the market absent the government-provided guarantee, including any difference in guarantee fees. *See* section 771(5)(E)(iii) of the Act. The Secretary will select a comparable commercial loan in accordance with § 351.505(a).

(2) *Government acting as owner.* In situations where a government, acting as the owner of a firm, provides a loan guarantee to that firm, the guarantee does not confer a benefit if the respondent provides evidence demonstrating that it is normal commercial practice in the country in question for shareholders to provide guarantees to their firms under similar circumstances and on comparable terms.

(b) *Time of receipt of benefit.* In the case of a loan guarantee, the Secretary normally will consider a benefit as having been received in the year in which the firm otherwise would have had to make a payment on the comparable commercial loan.

(c) *Allocation of benefit to a particular time period.* In allocating the benefit from a government-provided loan guarantee to a particular time period, the Secretary will use the methods set forth in § 351.505(c) regarding loans.

§ 351.507 Equity.

(a) *Benefit*—(1) *In general.* In the case of a government-provided equity infusion, a benefit exists to the extent that the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made. *See* section 771(5)(E)(i) of the Act.

(2) *Private investor prices available.*—(i) *In general.* Except as provided in paragraph (a)(2)(iii) of this section, the Secretary will consider an equity infusion as being inconsistent with usual investment practice (*see* paragraph (a)(1) of this section) if the price paid by the government for newly issued shares is greater than the price paid by private investors for the same (or similar form of) newly issued shares.

(ii) *Timing of private investor prices.* In selecting a private investor price under paragraph (a)(2)(i) of this section, the Secretary will rely on sales of newly issued shares made reasonably concurrently with the newly issued shares purchased by the government.

(iii) *Significant private sector participation required.* The Secretary will not use private investor prices under paragraph (a)(2)(i) of this section if the Secretary concludes that private investor purchases of newly issued shares are not significant.

(iv) *Adjustments for ''similar'' form of equity.* Where the Secretary uses private investor prices for a form of shares that is similar to the newly issued shares purchased by the government (*see* paragraph (a)(2)(i) of this section), the Secretary, where appropriate, will adjust the prices to reflect the differences in the forms of shares.

(3) *Actual private investor prices unavailable*—(i) *In general.* If actual private investor prices are not available under paragraph (a)(2) of this section, the Secretary will determine whether the firm funded by the government-provided equity was equityworthy or unequityworthy at the time of the equity infusion (*see* paragraph (a)(4) of this section). If the Secretary determines that the firm was equityworthy, the Secretary will apply paragraph (a)(5) of this section to determine whether the equity infusion was inconsistent with the usual investment practice of private investors. A determination by the Secretary that the firm was unequityworthy will constitute a determination that the equity infusion was inconsistent with usual investment practice of private investors, and the Secretary will apply paragraph (a)(6) of this section to measure the

benefit attributable to the equity infusion.

(4) *Equityworthiness*—(i) *In general.* The Secretary will consider a firm to have been equityworthy if the Secretary determines that, from the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable period of time. The Secretary may, in appropriate circumstances, focus its equityworthiness analysis on a project rather than the company as a whole. In making the equityworthiness determination, the Secretary may examine the following factors, among others:

(A) Objective analyses of the future financial prospects of the recipient firm or the project as indicated by, *inter alia*, market studies, economic forecasts, and project or loan appraisals prepared prior to the government-provided equity infusion in question;

(B) Current and past indicators of the recipient firm's financial health calculated from the firm's statements and accounts, adjusted, if appropriate, to conform to generally accepted accounting principles;

(C) Rates of return on equity in the three years prior to the government equity infusion; and

(D) Equity investment in the firm by private investors.

(ii) *Significance of a pre-infusion objective analysis.* For purposes of making an equityworthiness determination, the Secretary will request and normally require from the respondents the information and analysis completed prior to the infusion, upon which the government based its decision to provide the equity infusion (*see,* paragraph (a)(4)(i)(A) of this section). Absent the existence or provision of an objective analysis, containing information typically examined by potential private investors considering an equity investment, the Secretary will normally determine that the equity infusion received provides a countervailable benefit within the meaning of paragraph (a)(1) of this section. The Secretary will not necessarily make such a determination if the absence of an objective analysis is consistent with the actions of reasonable private investors in the country in question.

(iii) *Significance of prior subsidies.* In determining whether a firm was equityworthy, the Secretary will ignore current and prior subsidies received by the firm.

(5) *Benefit where firm is equityworthy.* If the Secretary determines that the firm or project was equityworthy (*see* paragraph (a)(4) of this section), the Secretary will examine the terms and the nature of the equity purchased to determine whether the investment was otherwise inconsistent with the usual investment practice of private investors. If the Secretary determines that the investment was inconsistent with usual private investment practice, the Secretary will determine the amount of the benefit conferred on a case-by-case basis.

(6) *Benefit where firm is unequityworthy.* If the Secretary determines that the firm or project was unequityworthy (*see* paragraph (a)(4) of this section), a benefit to the firm exists in the amount of the equity infusion.

(7) *Allegations.* The Secretary will not investigate an equity infusion in a firm absent a specific allegation by the petitioner which is supported by information establishing a reasonable basis to believe or suspect that the firm received an equity infusion that provides a countervailable benefit within the meaning of paragraph (a)(1) of this section.

(b) *Time of receipt of benefit.* In the case of a government-provided equity infusion, the Secretary normally will consider the benefit to have been received on the date on which the firm received the equity infusion.

(c) *Allocation of benefit to a particular time period.* The benefit conferred by an equity infusion shall be allocated over the same time period as a non-recurring subsidy. *See* § 351.524(d).

§ 351.508 Debt forgiveness.

(a) *Benefit.* In the case of an assumption or forgiveness of a firm's debt obligation, a benefit exists equal to the amount of the principal and/or interest (including accrued, unpaid interest) that the government has assumed or forgiven. In situations where the entity

assuming or forgiving the debt receives shares in a firm in return for eliminating or reducing the firm's debt obligation, the Secretary will determine the existence of a benefit under § 351.507 (equity infusions).

(b) *Time of receipt of benefit.* In the case of a debt or interest assumption or forgiveness, the Secretary normally will consider the benefit as having been received as of the date on which the debt or interest was assumed or forgiven.

(c) *Allocation of benefit to a particular time period*—(1) *In general.* The Secretary will treat the benefit determined under paragraph (a) of this section as a non-recurring subsidy, and will allocate the benefit to a particular year in accordance with § 351.524(d).

(2) *Exception.* Where an interest assumption is tied to a particular loan and where a firm can reasonably expect to receive the interest assumption at the time it applies for the loan, the Secretary will normally treat the interest assumption as a reduced-interest loan and allocate the benefit to a particular year in accordance with § 351.505(c) (loans).

§ 351.509 Direct taxes.

(a) *Benefit*—(1) *Exemption or remission of taxes.* In the case of a program that provides for a full or partial exemption or remission of a direct tax (*e.g.*, an income tax), or a reduction in the base used to calculate a direct tax, a benefit exists to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program.

(2) *Deferral of taxes.* In the case of a program that provides for a deferral of direct taxes, a benefit exists to the extent that appropriate interest charges are not collected. Normally, a deferral of direct taxes will be treated as a government-provided loan in the amount of the tax deferred, according to the methodology described in § 351.505. The Secretary will use a short-term interest rate as the benchmark for tax deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for tax deferrals of more than one year.

(b) *Time of receipt of benefit.*—(1) *Exemption or remission of taxes.* In the case of a full or partial exemption or remission of a direct tax, the Secretary normally will consider the benefit as having been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the exemption or remission. Normally, this date will be the date on which the firm filed its tax return.

(2) *Deferral of taxes.* In the case of a tax deferral of one year or less, the Secretary normally will consider the benefit as having been received on the date on which the deferred tax becomes due. In the case of a multi-year deferral, the Secretary normally will consider the benefit as having been received on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of a full or partial exemption, remission, or deferral of a direct tax to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.510 Indirect taxes and import charges (other than export programs).

(a) *Benefit*—(1) *Exemption or remission of taxes.* In the case of a program, other than an export program, that provides for the full or partial exemption or remission of an indirect tax or an import charge, a benefit exists to the extent that the taxes or import charges paid by a firm as a result of the program are less than the taxes the firm would have paid in the absence of the program.

(2) *Deferral of taxes.* In the case of a program, other than an export program, that provides for a deferral of indirect taxes or import charges, a benefit exists to the extent that appropriate interest charges are not collected. Normally, a deferral of indirect taxes or import charges will be treated as a government-provided loan in the amount of the taxes deferred, according to the methodology described in § 351.505. The Secretary will use a short-term interest rate as the benchmark for tax deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for tax deferrals of more than one year.

(b) *Time of receipt of benefit*—(1) *Exemption or remission of taxes.* In the case of a full or partial exemption or remission of an indirect tax or import charge, the Secretary normally will consider the benefit as having been received at the time the recipient firm otherwise would be required to pay the indirect tax or import charge.

(2) *Deferral of taxes.* In the case of the deferral of an indirect tax or import charge of one year or less, the Secretary normally will consider the benefit as having been received on the date on which the deferred tax becomes due. In the case of a multi-year deferral, the Secretary normally will consider the benefit as having been received on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of a full or partial exemption, remission, or deferral described in paragraph (a) of this section to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.511 Provision of goods or services.

(a) *Benefit*—(1) *In general.* In the case where goods or services are provided, a benefit exists to the extent that such goods or services are provided for less than adequate remuneration. *See* section 771(5)(E)(iv) of the Act.

(2) ''*Adequate Remuneration'' defined*—(i) *In general.* The Secretary will normally seek to measure the adequacy of remuneration by comparing the government price to a market-determined price for the good or service resulting from actual transactions in the country in question. Such a price could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions. In choosing such transactions or sales, the Secretary will consider product similarity; quantities sold, imported, or auctioned; and other factors affecting comparability.

(ii) *Actual market-determined price unavailable.* If there is no useable market-determined price with which to make the comparison under paragraph (a)(2)(i) of this section, the Secretary will seek to measure the adequacy of remuneration by comparing the government price to a world market price where it is reasonable to conclude that such price would be available to purchasers in the country in question. Where there is more than one commercially available world market price, the Secretary will average such prices to the extent practicable, making due allowance for factors affecting comparability.

(iii) *World market price unavailable.* If there is no world market price available to purchasers in the country in question, the Secretary will normally measure the adequacy of remuneration by assessing whether the government price is consistent with market principles.

(iv) *Use of delivered prices.* In measuring adequate remuneration under paragraph (a)(2)(i) or (a)(2)(ii) of this section, the Secretary will adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product. This adjustment will include delivery charges and import duties.

(b) *Time of receipt of benefit.* In the case of the provision of a good or service, the Secretary normally will consider a benefit as having been received as of the date on which the firm pays or, in the absence of payment, was due to pay for the government-provided good or service.

(c) *Allocation of benefit to a particular time period.* In the case of the provision of a good or service, the Secretary will normally allocate (expense) the benefit to the year in which the benefit is considered to have been received under paragraph (b) of this section. In the case of the provision of infrastructure, the Secretary will normally treat the benefit as non-recurring and will allocate the benefit to a particular year in accordance with § 351.524(d).

(d) *Exception for general infrastructure.* A financial contribution does not exist in the case of the government provision of general infrastructure. General infrastructure is defined as infrastructure that is created for the broad societal welfare of a country, region, state or municipality.

§ 351.512 Purchase of goods. [Reserved]

§ 351.513 Worker-related subsidies.

(a) *Benefit.* In the case of a program that provides assistance to workers, a benefit exists to the extent that the assistance relieves a firm of an obligation that it normally would incur.

(b) *Time of receipt of benefit.* In the case of assistance provided to workers, the Secretary normally will consider the benefit as having been received by the firm on the date on which the payment is made that relieves the firm of the relevant obligation.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) the benefit from assistance provided to workers to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.514 Export subsidies.

(a) *In general.* The Secretary will consider a subsidy to be an export subsidy if the Secretary determines that eligibility for, approval of, or the amount of, a subsidy is contingent upon export performance. In applying this section, the Secretary will consider a subsidy to be contingent upon export performance if the provision of the subsidy is, in law or in fact, tied to actual or anticipated exportation or export earnings, alone or as one of two or more conditions.

(b) *Exception.* In the case of export promotion activities of a government, a benefit does not exist if the Secretary determines that the activities consist of general informational activities that do not promote particular products over others.

§ 351.515 Internal transport and freight charges for export shipments.

(a) *Benefit*—(1) *In general.* In the case of internal transport and freight charges on export shipments, a benefit exists to the extent that the charges paid by a firm for transport or freight with respect to goods destined for export are less than what the firm would have paid if the goods were destined for domestic consumption. The Secretary will consider the amount of the benefit to equal the difference in amounts paid.

(2) *Exception.* For purposes of paragraph (a)(1) of this section, a benefit does not exist if the Secretary determines that:

(i) Any difference in charges is the result of an arm's-length transaction between the supplier and the user of the transport or freight service; or

(ii) The difference in charges is commercially justified.

(b) *Time of receipt of benefit.* In the case of internal transport and freight charges for export shipments, the Secretary normally will consider the benefit as having been received by the firm on the date on which the firm paid, or in the absence of payment was due to pay, the charges.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) the benefit from internal transport and freight charges for export shipments to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.516 Price preferences for inputs used in the production of goods for export.

(a) *Benefit*—(1) *In general.* In the case of a program involving the provision by governments or their agencies, either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, a benefit exists to the extent that the Secretary determines that the terms or conditions on which the products or services are provided are more favorable than the terms or conditions applicable to the provision of like or directly competitive products or services for use in the production of goods for domestic consumption unless, in the case of products, such terms or conditions are not more favorable than those commercially available on world markets to exporters.

(2) *Amount of benefit.* In the case of products provided under such schemes, the Secretary will determine the amount of the benefit by comparing the price of products used in the production of exported goods to the commercially available world market price

of such products, inclusive of delivery charges.

(3) *Commercially available.* For purposes of paragraph (a)(2) of this section, *commercially available* means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

(b) *Time of receipt of benefit.* In the case of a benefit described in paragraph (a)(1) of this section, the Secretary normally will consider the benefit to have been received as of the date on which the firm paid, or in the absence of payment was due to pay, for the product.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) benefits described in paragraph (a)(1) of this section to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.517 Exemption or remission upon export of indirect taxes.

(a) *Benefit.* In the case of the exemption or remission upon export of indirect taxes, a benefit exists to the extent that the Secretary determines that the amount remitted or exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

(b) *Time of receipt of benefit.* In the case of the exemption or remission upon export of an indirect tax, the Secretary normally will consider the benefit as having been received as of the date of exportation.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) the benefit from the exemption or remission upon export of indirect taxes to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.518 Exemption, remission, or deferral upon export of prior-stage cumulative indirect taxes.

(a) *Benefit*—(1) *Exemption of prior-stage cumulative indirect taxes.* In the case of a program that provides for the exemption of prior-stage cumulative indirect taxes on inputs used in the production of an exported product, a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste, or if the exemption covers taxes other than indirect taxes that are imposed on the input. If the Secretary determines that the exemption of prior-stage cumulative indirect taxes confers a benefit, the Secretary normally will consider the amount of the benefit to be the prior-stage cumulative indirect taxes that otherwise would have been paid on the inputs not consumed in the production of the exported product, making normal allowance for waste, and the amount of charges other than import charges covered by the exemption.

(2) *Remission of prior-stage cumulative indirect taxes.* In the case of a program that provides for the remission of prior-stage cumulative indirect taxes on inputs used in the production of an exported product, a benefit exists to the extent that the amount remitted exceeds the amount of prior-stage cumulative indirect taxes paid on inputs that are consumed in the production of the exported product, making normal allowance for waste. If the Secretary determines that the remission of prior-stage cumulative indirect taxes confers a benefit, the Secretary normally will consider the amount of the benefit to be the difference between the amount remitted and the amount of the prior-stage cumulative indirect taxes on inputs that are consumed in the production of the export product, making normal allowance for waste.

(3) *Deferral of prior-stage cumulative indirect taxes.* In the case of a program that provides for a deferral of prior-stage cumulative indirect taxes on an exported product, a benefit exists to the extent that the deferral extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste, and the government does not charge appropriate interest on the taxes deferred. If the Secretary determines that a benefit exists, the Secretary will normally treat the deferral as a government-provided loan in the amount of the tax deferred, according to the methodology described in § 351.505. The

Secretary will use a short-term interest rate as the benchmark for tax deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for tax deferrals of more than one year.

(4) *Exception.* Notwithstanding the provisions in paragraphs (a)(1), (a)(2), and (a)(3) of this action, the Secretary will consider the entire amount of the exemption, remission or deferral to confer a benefit, unless the Secretary determines that:

(i) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and to confirm which indirect taxes are imposed on these inputs, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export; or

(ii) If the government in question does not have a system or procedure in place, if the system or procedure is not reasonable, or if the system or procedure is instituted and considered reasonable, but is found not to be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, in what amounts, and which indirect taxes are imposed on the inputs.

(b) *Time of receipt of benefit.* In the case of the exemption, remission, or deferral of priorstage cumulative indirect taxes, the Secretary normally will consider the benefit as having been received:

(1) In the case of an exemption, as of the date of exportation;

(2) In the case of a remission, as of the date of exportation;

(3) In the case of a deferral of one year or less, on the date the deferred tax became due; and

(4) In the case of a multi-year deferral, on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of the exemption, remission or deferral of prior-stage cumulative indirect taxes to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.519 Remission or drawback of import charges upon export.

(a) *Benefit*—(1) *In general.* The term ''remission or drawback'' includes full or partial exemptions and deferrals of import charges.

(i) *Remission or drawback of import charges.* In the case of the remission or drawback of import charges upon export, a benefit exists to the extent that the Secretary determines that the amount of the remission or drawback exceeds the amount of import charges on imported inputs that are consumed in the production of the exported product, making normal allowances for waste.

(ii) *Exemption of import charges.* In the case of an exemption of import charges upon export, a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowances for waste, or if the exemption covers charges other than import charges that are imposed on the input.

(iii) *Deferral of import charges.* In the case of a deferral, a benefit exists to the extent that the deferral extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste, and the government does not charge appropriate interest on the import charges deferred.

(2) *Substitution drawback.* ''Substitution drawback'' involves a situation in which a firm uses a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them. Substitution drawback does not necessarily result in the conferral of a benefit. However, a benefit exists if the Secretary determines that:

(i) The import and the corresponding export operations both did not occur within a reasonable time period, not to exceed two years; or

(ii) The amount drawn back exceeds the amount of the import charges levied initially on the imported inputs for which drawback is claimed.

(3) *Amount of the benefit*—(i) *Remission or drawback of import charges.* If the Secretary determines that the remission or drawback, including substitution drawback, of import charges confers a benefit under paragraph (a)(1) or (a)(2) of this section, the Secretary normally will consider the amount of the benefit to be the difference between the amount of import charges remitted or drawn back and the amount paid on imported inputs consumed in production for which remission or drawback was claimed.

(ii) *Exemption of import charges.* If the Secretary determines that the exemption of import charges upon export confers a benefit, the Secretary normally will consider the amount of the benefit to be the import charges that otherwise would have been paid on the inputs not consumed in the production of the exported product, making normal allowance for waste, and the amount of charges other than import charges covered by the exemption.

(iii) *Deferral of import charges.* If the Secretary determines that the deferral of import charges upon export confers a benefit, the Secretary will normally treat a deferral as a government-provided loan in the amount of the import charges deferred on the inputs not consumed in the production of the exported product, making normal allowance for waste, according to the methodology described in §351.505. The Secretary will use a short-term interest rate as the benchmark for deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for deferrals of more than one year.

(4) *Exception.* Notwithstanding paragraph (a)(3) of this section, the Secretary will consider the entire amount of an exemption, deferral, remission or drawback to confer a benefit, unless the Secretary determines that:

(i) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export; or

(ii) If the government in question does not have a system or procedure in place, if the system or procedure is not reasonable, or if the system or procedure is instituted and considered reasonable, but is found not to be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts.

(b) *Time of receipt of benefit.* In the case of the exemption, deferral, remission or drawback, including substitution drawback, of import charges, the Secretary normally will consider the benefit as having been received:

(1) In the case of remission or drawback, as of the date of exportation;

(2) In the case of an exemption, as of the date of the exportation;

(3) In the case of a deferral of one year or less, on the date the import charges became due; and (4) In the case of a multi-year deferral, on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit from the exemption, deferral, remission or drawback of import charges to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.520 Export insurance.

(a) *Benefit*—(1) *In general.* In the case of export insurance, a benefit exists if the premium rates charged are inadequate to cover the long-term operating costs and losses of the program.

(2) *Amount of the benefit.* If the Secretary determines under paragraph (a)(1) of this section that premium rates are inadequate, the Secretary normally will calculate the amount of the benefit as the difference between the amount of premiums paid by the firm and the amount received by the firm under the insurance program during the period of investigation or review.

(b) *Time of receipt of benefit.* In the case of export insurance, the Secretary normally will consider the benefit as having been received in the year in which the difference described in paragraph (a)(2) of this section occurs.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit from export insurance to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.521 Import substitution subsidies. [Reserved]

§ 351.522 Green light and green box subsidies.

(a) *Certain agricultural subsidies.* The Secretary will treat as non-countervailable domestic support measures that are provided to certain agricultural products (*i.e.*, products listed in Annex 1 of the WTO Agreement on Agriculture) and that the Secretary determines conform to the criteria of Annex 2 of the WTO Agreement on Agriculture. *See* section 771(5B)(F) of the Act. The Secretary will determine that a particular domestic support measure conforms fully to the provisions of Annex 2 if the Secretary finds that the measure:

(1) Is provided through a publicly-funded government program (including government revenue foregone) not involving transfers from consumers;

(2) Does not have the effect of providing a price support to producers; and (3) Meets the relevant policy-specific criteria and conditions set out in paragraphs 2 through 13 of Annex 2.

(b) *Research subsidies.* In accordance with section 771(5B)(B)(iii)(II) of the Act, the Secretary will examine the total eligible costs to be incurred over the duration of a particular project to determine whether a subsidy for research activities exceeds 75 percent of the costs of industrial research, 50 percent of the costs of precompetitive development activity, or 62.5 percent of the costs for a project that includes both industrial research and precompetitive activity. If the Secretary determines that, at some point over the life of a particular project, these relevant thresholds will be exceeded, the Secretary will treat the entire amount of the subsidy as countervailable.

(c) *Subsidies for adaptation of existing facilities to new environmental requirements.* If the Secretary determines that a subsidy is given to upgrade existing facilities to environmental standards in excess of minimum statutory or regulatory requirements, the subsidy will not qualify for non-countervailable treatment under section 771(5B)(D) of the Act and the Secretary will treat the entire amount of the subsidy as countervailable.

§ 351.523 Upstream subsidies.

(a) *Investigation of upstream subsidies*—(1) *In general.* Before investigating the existence of an upstream subsidy (*see* section 771A of the Act), the Secretary must have a reasonable basis to believe or suspect that all of the following elements exist:

(i) A countervailable subsidy, other than an export subsidy, is provided with respect to an input product;

(ii) One of the following conditions exists:

(A) The supplier of the input product and the producer of the subject merchandise are affiliated;

(B) The price for the subsidized input product is lower than the price that the producer of the subject merchandise otherwise would pay another seller in an arm's-length transaction for an unsubsidized input product; or

(C) The government sets the price of the input product so as to guarantee that the benefit provided with respect to the input product is passed through to producers of the subject merchandise; and

(iii) The *ad valorem* countervailable subsidy rate on the input product, multiplied by the proportion of the total production costs of the subject merchandise accounted for by the input product, is equal to, or greater than, one percent.

(b) *Input product.* For purposes of this section, ''input product'' means any product used in the production of the subject merchandise.

(c) *Competitive benefit*—(1) *In general.* In evaluating whether a competitive benefit exists under section 771A(b) of the Act, the Secretary will determine whether the price for the subsidized input product is lower than the benchmark input price. For purposes of this section, the Secretary will use as a benchmark input price the following, in order of preference:

(i) The actual price paid by, or offered to, the producer of the subject merchandise for an unsubsidized input product, including an imported input product;

(ii) An average price for an unsubsidized input product, including an imported input product, based upon publicly available data;

(iii) The actual price paid by, or offered to, the producer of the subject merchandise for a subsidized input product, including an imported input product, that is adjusted to account for the countervailable subsidy;

(iv) An average price for a subsidized input product, including an imported input product, based upon publicly available data, that is adjusted to account for the countervailable subsidy; or

(v) An unadjusted price for a subsidized input product or any other surrogate price deemed appropriate by the Secretary.

For purposes of this section, such prices must be reflective of a time period that reasonably corresponds to the time of the purchase of the input.

(2) *Use of delivered prices.* The Secretary will use a delivered price whenever the Secretary uses the price of an input product under paragraph (c)(1) of this section.

(d) *Significant effect*—(1) *Presumptions.* In evaluating whether an upstream subsidy has a significant effect on the cost of manufacturing or producing the subject merchandise (*see* section 771A(a)(3) of the Act), the Secretary will multiply the *ad valorem* countervailable subsidy rate on the input product by the proportion of the total production cost of the subject merchandise that is accounted for by the input product. If the product of that multiplication exceeds five percent, the Secretary will presume the existence of a significant effect. If the product is less than one percent, the Secretary will presume the absence of a significant effect. If the product is between one and five percent, there will be no presumption.

(2) *Rebuttal of presumptions.* A party to the proceeding may present information to rebut these presumptions. In evaluating such information, the Secretary will consider the extent to which factors other than price, such as quality differences, are important determinants of demand for the subject merchandise.

§ 351.524 Allocation of benefit to a particular time period.

Unless otherwise specified in §§ 351.504–351.523, the Secretary will allocate benefits to a particular time period in accordance with this section.

(a) *Recurring benefits.* The Secretary will allocate (expense) a recurring benefit to the year in which the benefit is received.

(b) *Non-recurring benefits.* (1) *In general.* The Secretary will normally allocate a non-recurring benefit to a firm over the number of years corresponding to the average useful life (''AUL'') of renewable physical assets as defined in paragraph (d)(2) of this section.

(2) *Exception.* The Secretary will normally allocate (expense) non-recurring benefits provided under a particular subsidy program to the year in which the benefits are received if the total amount approved under the subsidy program is less than 0.5 percent of relevant sales (*e.g.*, total sales, export sales, the sales of a particular product, or the sales to a particular market) of the firm in question during the year in which the subsidy was approved.

(c) *''Recurring'' versus ''non-recurring'' benefits*—(1) *Non-binding iIlustrative lists of recurring and non-recurring benefits.* The Secretary normally will treat the following types of subsidies as providing recurring benefits: Direct tax exemptions and deductions; exemptions and excessive rebates of indirect taxes or import duties; provision of goods and services for less than adequate remuneration; price support payments; discounts on electricity, water, and other utilities; freight subsidies; export promotion assistance; early retirement payments; worker assistance; worker training; wage subsidies; and upstream subsidies. The Secretary normally will treat the following types of subsidies as providing non-recurring benefits: equity infusions, grants, plant closure assistance, debt forgiveness, coverage for operating losses, debt-to-equity conversions, provision of non-general infrastructure, and provision of plant and equipment.

(2) *The test for determining whether a benefit is recurring or non-recurring.* If a subsidy is not on the illustrative lists, or is not addressed elsewhere in these regulations, or if a party claims that a subsidy on the recurring list should be treated as non-recurring or a subsidy on the non-recurring list should be treated as recurring, the Secretary will consider the following criteria in determining whether the benefits from the subsidy should be considered recurring or non-recurring:

(i) Whether the subsidy is exceptional in the sense that the recipient cannot expect to receive additional subsidies under the same program on an ongoing basis from year to year;

(ii) Whether the subsidy required or received the government's express authorization or approval (*i.e.*, receipt of benefits is not automatic), or

(iii) Whether the subsidy was provided for, or tied to, the capital structure or capital assets of the firm.

(d) *Process for allocating non-recurring benefits over time.*—(1) *In general.* For purposes of allocating a non-recurring benefit over time and determining the annual benefit amount that should be assigned to a particular year, the Secretary will use the following formula:

$$A_k = \frac{y/n + [y - (y/n)(k-1)]d}{1+d}$$

Where:

A_k = the amount of the benefit allocated to year k,

y = the face value of the subsidy,

n = the AUL (see paragraph (d)(2) of this section),

d = the discount rate (see paragraph (d)(3) of this section), and

k = the year of allocation, where the year of receipt = 1 and $1 \leq k \leq n$.

(2) *AUL*—(i) *In general.* The Secretary will presume the allocation period for non-recurring subsidies to be the AUL of renewable physical assets for the industry concerned as listed in the Internal Revenue Service's (''IRS'') 1977 Class Life Asset Depreciation Range System (Rev. Proc. 77–10, 1977–1, C.B. 548 (RR–38)), as updated by the Department of Treasury. The presumption will apply unless a party claims and establishes that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry under investigation, subject to the requirement, in paragraph (d)(2)(ii) of this section, that the difference between the company-specific AUL or country-wide AUL for the industry under investigation and the AUL in the IRS tables is significant. If this is the case, the Secretary will use company-specific or country-wide AULs to allocate non-recurring benefits over time (*see* paragraph (d)(2)(iii) of this section).

(ii) *Definition of ''significant.''* For purposes of this paragraph (d), *significant* means that a party has demonstrated that the company-specific AUL or country-wide AUL for the industry differs from AUL in the IRS tables by one year or more.

(iii) *Calculation of a company-specific or country-wide AUL.* A calculation of a company-specific AUL will not be accepted by the Secretary unless it satisfies the following requirements: the company must base its depreciation on an estimate of the actual useful lives of assets and it must use straight-line depreciation or demonstrate that its calculation is not distorted through irregular or uneven additions to the pool of fixed assets. A company-specific AUL is calculated by dividing the aggregate of the annual average gross book values of the firm's depreciable productive fixed assets by the firm's aggregated annual charge to accumulated depreciation, for a period considered appropriate by the Secretary, subject to appropriate normalizing adjustments. A country-wide AUL for the industry under investigation will not be accepted by the Secretary unless the respondent government demonstrates that it has a system in place to calculate AULs for its industries, and that this system provides a reliable representation of AUL.

(iv) *Exception.* Under certain extraordinary circumstances, the Secretary may consider whether an allocation period other than AUL is appropriate or whether the benefit stream begins at a date other than the date the subsidy was bestowed.

(3) *Selection of a discount rate.* (i) *In general.* The Secretary will select a discount rate based upon data for the year in which the government agreed to provide the subsidy. The Secretary will

use as a discount rate the following, in order of preference:

(A) The cost of long-term, fixed-rate loans of the firm in question, excluding any loans that the Secretary has determined to be countervailable subsidies;

(B) The average cost of long-term, fixed-rate loans in the country in question; or

(C) A rate that the Secretary considers to be most appropriate.

(ii) *Exception for uncreditworthy firms.* In the case of a firm considered by the Secretary to be uncreditworthy (*see* § 351.505(a)(4)), the Secretary will use as a discount rate the interest rate described in § 351.505(a)(3)(iii).

§ 351.525 Calculation of ad valorem subsidy rate and attribution of subsidy to a product.

(a) *Calculation of ad valorem subsidy rate.* The Secretary will calculate an *ad valorem* subsidy rate by dividing the amount of the benefit allocated to the period of investigation or review by the sales value during the same period of the product or products to which the Secretary attributes the subsidy under paragraph (b) of this section. Normally, the Secretary will determine the sales value of a product on an f.o.b. (port) basis (if the product is exported) or on an f.o.b. (factory) basis (if the product is sold for domestic consumption). However, if the Secretary determines that countervailable subsidies are provided with respect to the movement of a product from the port or factory to the place of destination (*e.g.*, freight or insurance costs are subsidized), the Secretary may make appropriate adjustments to the sales value used in the denominator.

(b) *Attribution of subsidies.* (1) *In general.* In attributing a subsidy to one or more products, the Secretary will apply the rules set forth in paragraphs (b)(2) through (b)(7) of this section.

(2) *Export subsidies.* The Secretary will attribute an export subsidy only to products exported by a firm.

(3) *Domestic subsidies.* The Secretary will attribute a domestic subsidy to all products sold by a firm, including products that are exported.

(4) *Subsidies tied to a particular market.* If a subsidy is tied to sales to a particular market, the Secretary will attribute the subsidy only to products sold by the firm to that market.

(5) *Subsidies tied to a particular product.* (i) *In general.* If a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product.

(ii) *Exception.* If a subsidy is tied to production of an input product, then the Secretary will attribute the subsidy to both the input and downstream products produced by a corporation.

(6) *Corporations with cross-ownership.* (i) *In general.* The Secretary normally will attribute a subsidy to the products produced by the corporation that received the subsidy.

(ii) *Corporations producing the same product.* If two (or more) corporations with cross-ownership produce the subject merchandise, the Secretary will attribute the subsidies received by either or both corporations to the products produced by both corporations.

(iii) *Holding or parent companies.* If the firm that received a subsidy is a holding company, including a parent company with its own operations, the Secretary will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries. However, if the Secretary finds that the holding company merely served as a conduit for the transfer of the subsidy from the government to a subsidiary of the holding company, the Secretary will attribute the subsidy to products sold by the subsidiary.

(iv) *Input suppliers.* If there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, the Secretary will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

(v) *Transfer of subsidy between corporations with cross-ownership producing different products.* In situations where paragraphs (b)(6)(i) through (iv) of this section do not apply, if a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership, the Secretary will attribute

the subsidy to products sold by the recipient of the transferred subsidy.

(vi) *Cross-ownership defined.* Cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations.

(7) *Multinational firms.* If the firm that received a subsidy has production facilities in two or more countries, the Secretary will attribute the subsidy to products produced by the firm within the country of the government that granted the subsidy. However, if it is demonstrated that the subsidy was tied to more than domestic production, the Secretary will attribute the subsidy to multinational production.

(c) *Trading companies.* Benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm which is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm are affiliated.

§ 351.526 Program-wide changes.

(a) *In general.* The Secretary may take a program-wide change into account in establishing the estimated countervailing duty cash deposit rate if:

(1) The Secretary determines that subsequent to the period of investigation or review, but before a preliminary determination in an investigation (*see* § 351.205) or a preliminary result of an administrative review or a new shipper review (*see* §§ 351.213 and 351.214), a program-wide change has occurred; and

(2) The Secretary is able to measure the change in the amount of countervailable subsidies provided under the program in question.

(b) *Definition of program-wide change.* For purposes of this section, ''program-wide change'' means a change that:

(1) Is not limited to an individual firm or firms; and

(2) Is effectuated by an official act, such as the enactment of a statute, regulation, or decree, or contained in the schedule of an existing statute, regulation, or decree.

(c) *Effect limited to cash deposit rate.*—(1) *In general.* The application of paragraph (a) of this section will not result in changing, in an investigation, an affirmative determination to a negative determination or a negative determination to an affirmative determination.

(2) *Example.* In a countervailing duty investigation, the Secretary determines that during the period of investigation a countervailable subsidy existed in the amount of 10 percent *ad valorem.* Subsequent to the period of investigation, but before the preliminary determination, the foreign government in question enacts a change to the program that reduces the amount of the subsidy to a *de minimis* level. In a final determination, the Secretary would issue an affirmative determination, but would establish a cash deposit rate of zero.

(d) *Terminated programs.* The Secretary will not adjust the cash deposit rate under paragraph (a) of this section if the program-wide change consists of the termination of a program and:

(1) The Secretary determines that residual benefits may continue to be bestowed under the terminated program; or

(2) The Secretary determines that a substitute program for the terminated program has been introduced and the Secretary is not able to measure the amount of countervailable subsidies provided under the substitute program.

§ 351.527 Transnational subsidies.

Except as otherwise provided in section 701(d) of the Act (subsidies provided to international consortia) and section 771A of the Act (upstream subsidies), a subsidy does not exist if the Secretary determines that the funding for the subsidy is supplied in accordance with, and as part of, a program or project funded:

(a) By a government of a country other than the country in which the recipient firm is located; or

(b) By an international lending or development institution.

Subpart F—Subsidy Determinations Regarding Cheese Subject to an In-Quota Rate of Duty

§ 351.601 Annual list and quarterly update of subsidies.

The Secretary will make the determinations called for by section 702(a) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 1202 note) based on the available information, and will publish the annual list and quarterly updates described in such section in the FEDERAL REGISTER.

§ 351.602 Determination upon request.

(a) *Request for determination.* (1) Any person, including the Secretary of Agriculture, who has reason to believe there have been changes in or additions to the latest annual list published under § 351.601 may request in writing that the Secretary determine under section 702(a)(3) of the Trade Agreements Act of 1979 whether there are any changes or additions. The person must file the request with the Central Records Unit (*see* § 351.103). The request must 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 must contain the following, to the extent reasonably available to the requesting person:

(i) The name and address of the person;

(ii) The article of cheese subject to an in-quota rate of duty allegedly benefitting from the changed or additional subsidy;

(iii) The country of origin of the article of cheese subject to an in-quota rate of duty; and

(iv) 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.

(2) The requirements of § 351.303 (c) and (d) 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.

§ 351.603 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 section 702(a)(3) of the Trade Agreements Act of 1979, whether or not the alleged subsidies are included in or should be added to the latest annual list or quarterly update.

§ 351.604 Access to information.

Subpart C of this part applies to factual information submitted in connection with this subpart.

Subpart G—Applicability Dates

§ 351.701 Applicability dates.

The regulations contained in this part 351 apply to all administrative reviews initiated on the basis of requests made on or after the first day of July, 1997, to all investigations and other segments of proceedings initiated on the basis of petitions filed or requests made after June 18, 1997 and to segments of proceedings self-initiated by the Department after June 18, 1997. Segments of proceedings to which part 351 do not apply will continue to be governed by the regulations in effect on the date the petitions were filed or requests were made for those segments, to the extent that those regulations were not invalidated by the URAA or

replaced by the interim final regulations published on May 11, 1995 (60 FR 25130 (1995)). For segments of proceedings initiated on the basis of petitions filed or requests made after January 1, 1995, but before part 351 applies, part 351 will serve as a restatement of the Department's interpretation of the requirements of the Act as amended by the URAA.

§ 351.702 Applicability dates for countervailing duty regulations.

(a) Notwithstanding § 351.701, the regulations in subpart E of this part apply to:

(1) All CVD investigations initiated on the basis of petitions filed after December 28, 1998;

(2) All CVD administrative reviews initiated on the basis of requests filed on or after the first day of January 1999; and

(3) To all segments of CVD proceedings self-initiated by the Department after December 28, 1998.

(b) Segments of CVD proceedings to which subpart E of this part does not apply will continue to be guided by the Department's previous methodology (in particular, as described in the 1989 Proposed Regulations), except to the extent that the previous methodology was invalidated by the URAA, in which case the Secretary will treat subpart E of this part as a restatement of the Department's interpretation of the requirements of the Act as amended by the URAA.

[63 FR 65417, Nov. 25, 1998]

ANNEX I TO PART 351—DEADLINES FOR PARTIES IN COUNTERVAILING INVESTIGATIONS

Day [1]	Event	Regulation
0 days	Initiation	
31 days [2]	Notification of difficulty in responding to questionnaire.	351.301(c)(2)(iv) (14 days after date of receipt of initial questionnaire)
37 days	Application for an administrative protective order.	351.305(b)(3)
40 days	Request for postponement by petitioner	351.205(e) (25 days or more before preliminary determination)
45 days	Allegation of critical circumstances	351.206(c)(2)(i) (20 days before preliminary determination)
47 days	Questionnaire response	351.301(c)(2)(iii) (30 days from date of receipt of initial questionnaire)
55 days	Allegation of upstream subsidies	351.301(d)(4)(ii)(A) (10 days before preliminary determination)
65 days (Can be extended)	Preliminary determination	351.205(b)(1)
72 days	Submission of proposed suspension agreement.	351.208(f)(1)(B) (7 days after preliminary determination)
75 days [3]	Submission of factual information	351.301(b)(1) (7 days before date on which verification is to commence)
75 days	Submission of ministerial error comments	351.224(c)(2) (5 days after release of disclosure documents)
77 days [4]	Request to align a CVD case with a concurrent AD case.	351.210(i) (5 days after date of publication of preliminary determination)
102 days	Request for a hearing	351.310(c) (30 days after date of publication of preliminary determination)
119 days	Critical circumstances allegation	351.206(e) (21 days or more before final determination)
122 days	Requests for closed hearing sessions	351.310(f) (No later than the date the case briefs are due)
122 days	Submission of briefs	351.309(c)(1)(i) (50 days after date of publication of preliminary determination)
125 days	Allegation of upstream subsidies	351.301(d)(4)(ii)(B) (15 days before final determination)
127 days	Submission of rebuttal briefs	351.309(d) (5 days after dead-line for filing case brief)
129 days	Hearing	351.310(d)(1) (2 days after submission of rebuttal briefs)
140 days (Can be extended)	Final determination	351.210(b)(1) (75 days after preliminary determination)
150 days	Submission of ministerial error comments	351.224(c)(2) (5 days after release of disclosure documents)
155 days	Submission of replies to ministerial error comments.	351.224(c)(3) (5 days after filing of comments)

Day [1]	Event	Regulation
192 days	Order issued	351.211(b)

[1] Indicates the number of days from the date of initiation. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.
[2] Assumes that the Department sends out the questionnaire within 10 days of the initiation and allows 7 days for receipt of the questionnaire from the date on which it was transmitted.
[3] Assumes about 17 days between the preliminary determination and verification.
[4] Assumes that the preliminary determination is published 7 days after issuance (*i.e.,* signature).

Annex II to Part 351—Deadlines for Parties in Countervailing Administrative Reviews

Day [1]	Event	Regulation
0 days	Request for review	351.213(b) (Last day of the anniversary month)
30 days	Publication of initiation notice	351.221(c)(1)(i) (End of month following the anniversary month)
66 days [2]	Notification of difficulty in responding to questionnaire.	351.301(c)(2)(iv) (14 days after date of receipt of initial questionnaire)
75 days	Application for an administrative protective order.	351.305(b)(3)
90 days [3]	Questionnaire response	351.301(c)(2)(iii) (At least 30 days after date of receipt of initial questionnaire)
120 days	Withdrawal of request for review	351.213(d)(1) (90 days after date of publication of initiation)
130 days	Request for verification	351.307(b)(1)(v) (100 days after date of publication of initiation)
140 days	Submission of factual information	351.301(b)(2)
245 days (Can be extended)	Preliminary results of review	351.213(h)(1)
282 days [4]	Request for a hearing and/or closed hearing session.	351.310(c); 351.310(f) (30 days after date of publication of preliminary results)
282 days	Submission of briefs	351.309(c)(1)(ii) (30 days after date of publication of preliminary results)
287 days	Submission of rebuttal briefs	351.309(d)(1) (5 days after deadline for filing case briefs)
289 days	Hearing	351.310(d)(1) (2 days after submission of rebuttal briefs)
372 days (Can be extended)	Final results of review	351.213(h)(1) (120 days after date of publication of preliminary results)
382 days	Submission of ministerial error comments	351.224(c)(2) (5 days after release of disclosure documents)
387 days	Replies to ministerial error comments	351.224(c)(3) (5 days after filing of comments)

[1] Indicates the number of days from the end of the anniversary month. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.
[2] Assumes that the Department sends out the questionnaire 45 days after the last day of the anniversary month and allows 7 days for receipt of the questionnaire from the date on which it was transmitted.
[3] Assumes that the Department sends out the questionnaire on day 45 and the response is due 45 days later.
[4] Assumes that the preliminary results are published 7 days after issuance (*i.e.*, signature).

Annex III to Part 351—Deadlines for Parties in Antidumping Investigations

Day [1]	Event	Regulation
0 days	Initiation	
37 days	Application for an administrative protective order.	351.305(b)(3)
50 days	Country-wide cost allegation	351.301(d)(2)(i)(A) (20 days after date on which initial questionnaire was transmitted)
51 days [2]	Notification of difficulty in responding to questionnaire.	351.301(c)(2)(iv) (Within 14 days after date of receipt of initial questionnaire)
51 days	Section A response	None
67 days	Sections B, C, D, E responses	351.301(c)(2)(iii) (At least 30 days after date of receipt of initial questionnaire)
70 days	Viability arguments	351.301(d)(1) (40 days after date on which initial questionnaire was transmitted)
87 days	Company-specific cost allegations	351.301(d)(2)(i)(B)
87 days	Major input cost allegations	351.301(d)(3)
115 days	Request for postponement by petitioner	351.205(e) (25 days or more before preliminary determination)
120 days	Allegation of critical circumstances	351.206(c)(2)(i) (20 days before preliminary determination)
140 days (Can be extended)	Preliminary determination	351.205(b)(1)
150 days	Submission of ministerial error comments	351.224(c)(2) (5 days after release of disclosure documents)

Day [1]	Event	Regulation
155 days	Submission of proposed suspension agreement.	351.208(f)(1)(A) (15 days after preliminary determination)
161 days [3]	Submission of factual information	351.301(b)(1) (7 days before date on which verification is to commence)
177 days [4]	Request for a hearing	351.310(c) (30 days after date of publication of preliminary determination)
187 days	Submission of publicly available information to value factors (NME's).	351.301(c)(3)(i) (40 days after date of publication of preliminary determination)
194 days	Critical circumstance allegation	351.206(e) (21 days before final determination)
197 days (Can be changed)	Request for closed hearing sessions	351.310(f) (No later than the date the case briefs are due)
197 days (Can be changed)	Submission of briefs	351.309(c)(1)(i) (50 days after date of publication of preliminary determination)
202 days	Submission of rebuttal briefs	351.309(d) (5 days after dealine for filing case briefs)
204 days	Hearing	351.310(d)(1) (2 days after submission of rebuttal briefs)
215 days	Request for postponement of the final determination.	351.210(e)
215 days (Can be extended)	Final determination	351.210(b)(1) (75 days after preliminary determination)
225 days	Submission ministerial error comments	351.224(c)(2) (5 days after release of disclosure documents)
230 days	Replies to ministerial error comments	351.224(c)(3) (5 days after filing of comments)
267 days	Order issued	351.211(b)

[1] Indicates the number of days from the date of initiation. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.
[2] Assumes that the Department sends out the questionnaire 5 days after the ITC vote and allows 7 days for receipt of the questionnaire from the date on which it was transmitted.
[3] Assumes about 28 days between the preliminary determination and verification.
[4] Assumes that the preliminary determination is published 7 days after issuance (*i.e.,* signature).

ANNEX IV TO PART 351—DEADLINES FOR PARTIES IN ANTIDUMPING ADMINISTRATIVE REVIEWS

Day[1]	Event	Regulation
0 days	Request for review	351.213(b) (Last day of the anniversary month)
30 days	Publication of initiation	351.221 (c)(1)(i) (End of month following the anniversary month)
37 days	Application for an administrative protective order.	351.305(b)(3)
60 days	Request to examine absorption of duties (AD)	351.213(j) (30 days after date of publication of initiation)
66 days [2]	Notification of difficulty in responding to questionnaire.	351.301(c)(2)(iv) (14 days after date of receipt of initial questionnaire)
66 days	Section A response	None
85 days	Viability arguments	351.301(d)(1) (40 days after date of transmittal of initial questionnaire)
90 days[3]	Sections B, C, D, E response	351.301(c)(2)(iii) (At least 30 days after date of receipt of initial questionnaire)
110 days	Company-specific cost allegations	351.301(d)(2)(i)(B) (20 days after relevant section is filed)
110 days	Major input cost allegations	351.301(d)(3) (20 days after relevant section is filed)
120 days	Withdrawal of request for review	351.213(d)(1) (90 days after date of publication of initiation)
130 days	Request for verification	351.307(b)(1)(v) (100 days after date of publication of initiation)
140 days	Submission of factual information	351.301(b)(2)
245 days (Can be extended)	Preliminary results of review	351.213(h)(1)
272 days[4]	Submission of publicly available information to value factors (NME's).	351.301(c)(3)(ii) (20 days after date of publication of preliminary results)
282 days	Request for a hearing and/or closed hearing session.	351.310(c); 351.310(f) (30 days after date of publication of preliminary results)
282 days	Submission of briefs	351.309(c)(1)(ii) (30 days after date of publication of preliminary results)
287 days	Submission of rebuttal briefs	351.309(d)(1) (5 days after deadline for filing case briefs)
289 days	Hearing; closed hearing session	351.310(d)(1) (2 days after submission of rebuttal briefs)
372 days (Can be extended)	Final results of review	351.213(h)(1) (120 days after date of publication of preliminary results)

Day[1]	Event	Regulation
382 days	Ministerial error comments	351.224(c)(2) (5 days after release of disclosure documents)
387 days	Replies to ministerial error comments	351.224(c)(3) (5 days after filing of comments)

[1] Indicates the number of days from the end of the anniversary month. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.
[2] Assumes that the Department sends out the questionnaire 45 days after the last day of the anniversary month and allows 7 days for receipt of the questionnaire from the date on which it was transmitted.
[3] Assumes that the Department sends out the questionnaire on day 45 and the response is due 45 days later.
[4] Assumes that the preliminary results are published 7 days after issuance (*i.e.,* signature).

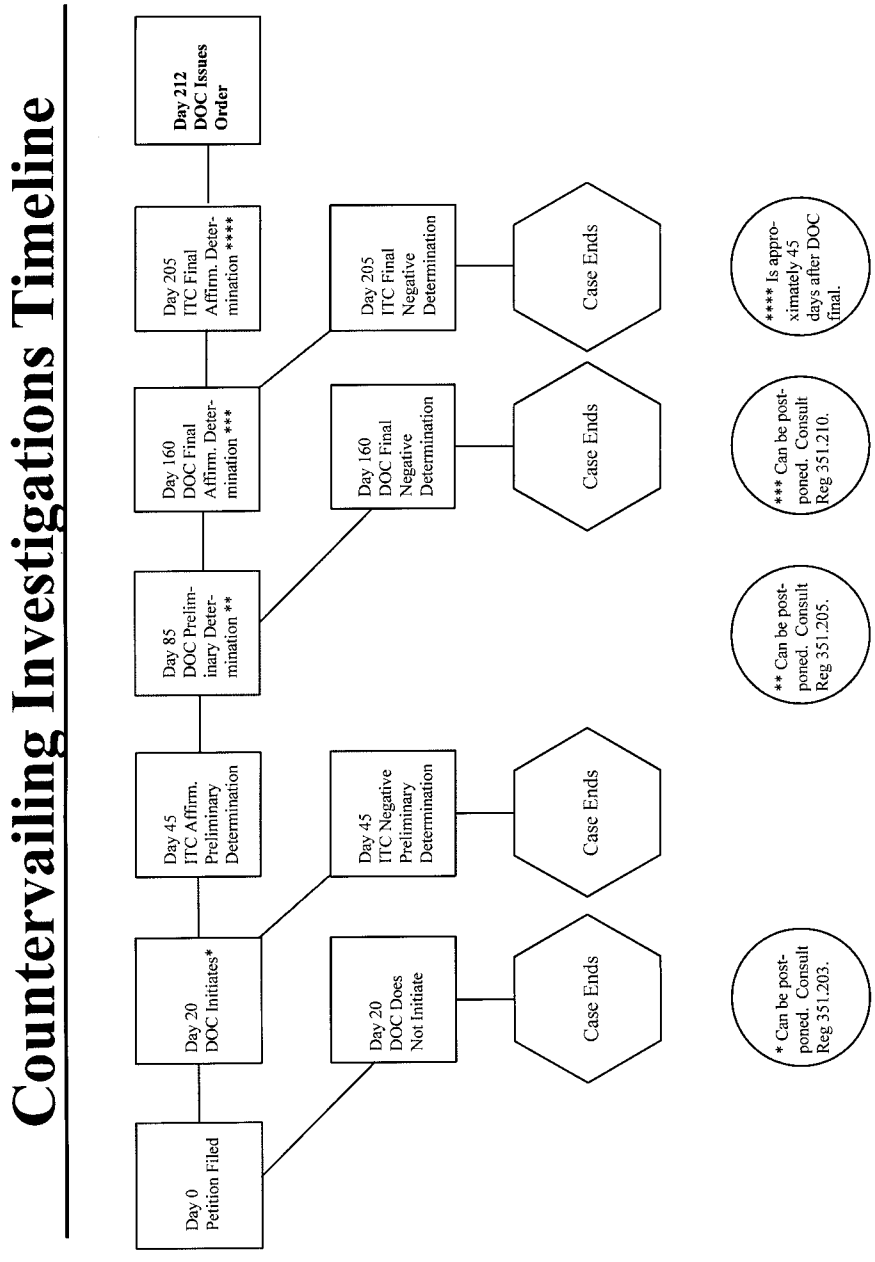
ANNEX V TO PART 351—COMPARISON OF PRIOR AND NEW REGULATIONS

Prior	New	Description
PART 353—ANTIDUMPING DUTIES		
Subpart A—Scope and Definitions		
353.1	351.101	Scope of regulations
353.2	351.102	Definitions
353.3	351.104	Record of proceedings
353.4	351.105	Public, proprietary, privileged & classified
353.5	Removed	Trade and Tariff Act of 1984 amendments
353.6	351.106	*De minimis* weighted-average dumping margin
Subpart B—Antidumping Duty Procedures		
353.11	351.201	Self-initiation
353.12	351.202	Petition requirements
353.13	351.203	Determination of sufficiency of petition
353.14	351.204(e)	Exclusion from antidumping duty order
353.15	351.205	Preliminary determination
353.16	351.206	Critical circumstances
353.17	351.207	Termination of investigation
353.18	351.208	Suspension of investigation
353.19	351.209	Violation of suspension agreement
353.20	351.210	Final determination
353.21	351.211	Antidumping duty order
353.21(c)	351.204(e)	Exclusion from antidumping duty order
1353.22 (a)–(d)	351.213, 351.221	Administrative reviews under 751(a) of the Act
353.22(e)	351.212(c)	Automatic assessment of duties
353.22(f)	351.216, 351.221(c)(3)	Changed circumstances reviews
353.22(g)	351.215, 351.221(c)(2)	Expedited antidumping review
353.23	351.212(d)	Provisional measures deposit cap
353.24	351.212(e)	Interest on overpayments and under-payments
353.25	351.222	Revocation of orders; termination of suspended investigations
353.26	351.402(f)	Reimbursement of duties
353.27	351.223	Downstream product monitoring
353.28	351.224	Correction of ministerial errors
353.29	351.225	Scope rulings
Subpart C—Information and Argument		
353.31 (a)–(c)	351.301	Time Limits for submission of factual information
353.31(a)(3)	351.301(d), 351.104(a)(2)	Return of untimely material
353.31(b)(3)	351.302(c)	Request for extension of time
353.31 (d)–(i)	351.303	Filing, format, translation, service and certification
353.32	351.304	Request for proprietary treatment of information
353.33	351.104, 351.304(a)(2)	Information exempt from disclosure
353.34	351.305, 351.306	Disclosure of information under protective order
353.35	Removed	*Ex parte* meeting
353.36	351.307	Verification
353.37	351.308	Determination on the basis of the facts available
353.38 (a)–(e)	351.309	Written argument
353.38(f)	351.310	Hearings
Subpart D—Calculation of Export Price, Constructed Export Price, Fair Value and Normal Value		
353.41	351.402	Calculation of export price
353.42(a)	351.102	Fair value (definition)
353.42(b)	351.104(c)	Transaction and persons examined
353.43	351.403(b)	Sales used in calculating normal value
353.44	Removed	Sales at varying prices
353.45	351.403	Transactions between affiliated parties

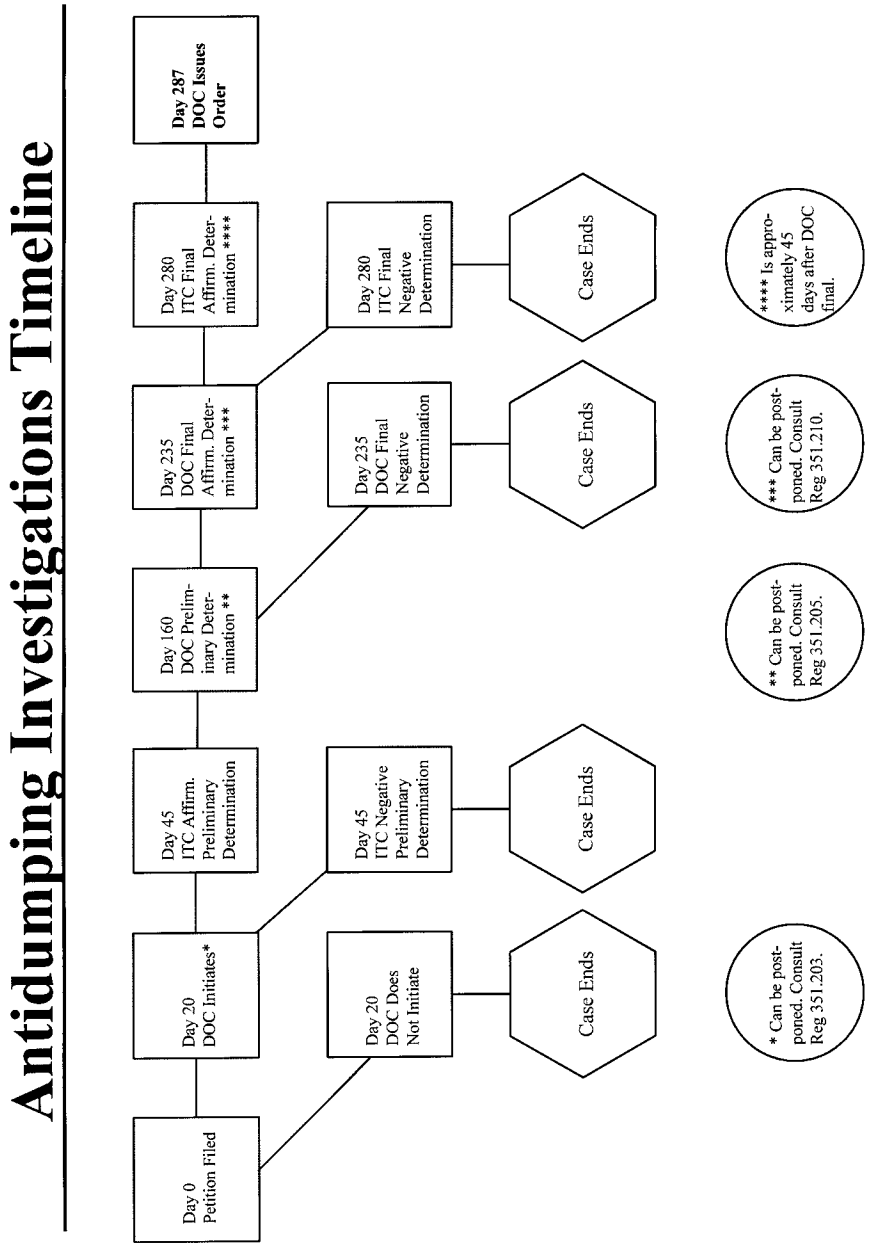
Prior	New	Description
353.46	351.404	Selection of home market as the basis for normal value
353.47	Removed	Intermediate countries
353.48	351.404	Basis for normal value if home market sales are inadequate
353.49	351.404	Sales to a third country
353.50	351.405, 351.407	Calculation of normal value based on constructed value
353.51	351.406, 351.407	Sales at less than the cost of production
353.52	351.408	Nonmarket economy countries
353.53	Removed	Multinational corporations
353.54	351.401(b)	Claims for adjustments
353.55	351.409	Differences in quantities
353.56	351.410	Differences in circumstances of sale
353.57	351.411	Differences in physical characteristics
353.58	351.412	Levels of trade
353.59(a)	351.413	Insignificant adjustments
353.59(b)	351.414	Use of averaging
353.60	351.415	Conversion of currency
PART 355—COUNTERVAILING DUTIES		
Subpart A—Scope and Definitions		
355.1	351.001	Scope of regulations
355.2	351.002	Definitions
355.3	351.004	Record of proceeding
355.4	351.005	Public, proprietary, privileged & classified
355.5	351.003(a)	Subsidy library
355.6	Removed	Trade and Tariff Act of 1984 amendments
355.7	351.006	*De minimis* net subsidies
Subpart B—Countervailing Duty Procedures		
355.11	351.101	Delf-initiation
355.12	351.102	Petition requirements
355.13	351.103	Determination of sufficiency of petition
355.14	351.104(e)	Exclusion from countervailing duty order
355.15	351.105	Preliminary determination
355.16	351.106	Critical circumstances
355.17	351.107	Termination of investigation
355.18	351.108	Suspension of investigation
355.19	351.109	Violation of agreement
355.20	351.110	Final determination
355.21	351.111	Countervailing duty order
355.21(c)	351.104(e)	Exclusion from countervailing duty order
355.22 (a)–(c)	351.113, 351.121	Administrative reviews under 751(a) of the Act
355.22(d)	Removed	Calculation of individual rates
355.22(e)	351.113(h)	Possible cancellation or revision of suspension agreements
355.22(f)	Removed	Review of individual producer or exporter
355.22(g)	351.112(c)	Automatic assessment of duties
355.22(h)	351.116, 351.121(c)(3)	Changed circumstances review
355.22(i)	351.120, 351.221(c)(7)	Review at the direction of the President
355.23	351.112(d)	Provisional measures deposit cap
355.24	351.112(e)	Interest on overpayments and underpayments
355.25	351.112	Revocation of orders; termination of suspended investigations
355.27	351.123	Downstream product monitoring
355.28	351.124	Correction of ministerial errors
355.29	351.125	Scope determinations
Subpart C—Information and Argument		
355.31 (a)–(c)	351.301	Time limits for submission of factual information
355.31(a)(3)	351.302(d), 351.104(a)(2)	Return of untimely material
355.31(b)(3)	351.302(c)	Request for extension of time
355.31 (d)–(i)	351.303	Filing, format, translation, service and certification
355.32	351.304	Request for proprietary treatment of information
355.33	351.104, 351.304(a)(2)	Information exempt from disclosure
355.34	351.305, 351.306	Disclosure of information under protective order
355.35	Removed	*Ex parte* meeting
355.36	351.307	Verification
355.37	351.308	Determinations on the basis of the facts available
355.38 (a)–(e)	351.309	Written argument
355.38(f)	351.310	Hearings
355.39	351.311	Subsidy practice discovered during investigation or review

Prior	New	Description
Subpart D—Quota Cheese Subsidy Determinations		
355.41	Removed	Definition of subsidy
355.42	351.601	Annual list and quarterly update
355.43	351.602	Determination upon request
355.44	351.603	Complaint of price-undercutting
355.45	351.604	Access to information

ANNEX VI TO PART 351—COUNTERVAILING INVESTIGATIONS TIMELINE



ANNEX VII TO PART 351—ANTIDUMPING INVESTIGATIONS TIMELINE



ANNEX VIII–A TO PART 351—SCHEDULE FOR 90-DAY SUNSET REVIEWS

Day [1]	Event	Regulation
0	Initiation	§ 351.218(c)
15	Filing of Notice of Intent to Participate by domestic interested parties.	§ 351.218(d)(1)(i) (not later than 15 days after the date of publication of the Notice of Initiation)
20	Notification to the ITC that no domestic interested party has responded to the Notice of Initiation.	§ 351.218(d)(1)(iii)(B)(*2*) (normally not later than 20 days after the date of publication of the Notice of Initiation)
30	Filing of substantive response to the Notice of Initiation by all interested parties and industrial users and consumers.	§§ 351.218(d)(3)(i) and 351.218(d)(3)(vi) (not later than 30 days after the date of publication of the Notice of Initiation)
35	Filing of rebuttal to substantive response to the Notice of Initiation.	§ 351.218(d)(4) (not later than 5 days after the substantive response is filed with the Department)
40	Notification to the ITC that no domestic interested party has responded to the Notice of Initiation (based on inadequate response from domestic interested parties).	§ 351.218(e)(1)(i)(C)(2) (normally not later than 40 days after the date of publication of the Notice of Initiation)
90	Final determination revoking an order or terminating a suspended investigation where no domestic interested party responds to the Notice of Initiation.	§§ 351.218(d)(1)(iii)(B)(*3*) and 351.222(i)(1)(i) (not later than 90 days after the date of publication of the Notice of Initiation)

[1] Indicates the number of days from the date of publication in the FEDERAL REGISTER of the Notice of Initiation.

[63 FR 13524, Mar. 20, 1998]

ANNEX VIII–B TO PART 351—SCHEDULE FOR EXPEDITED SUNSET REVIEWS

Day [1]	Event	Regulation
0	Initiation	§ 351.218(c)
15	Filing of Notice of Intent to Participate by domestic interested parties.	§ 351.218(d)(1)(i) (not later than 15 days after the date of publication of the Notice of Initiation)
30	Filing of Statement of Waiver by respondent interested parties.	§ 351.218(d)(2)(i) (not later than 30 days after the date of publication of the Notice of Initiation)
30	Filing of substantive response to the Notice of Initiation by all interested parties and industrial users and consumers.	§§ 351.218(d)(3)(i) and 351.218(d)(3)(vi) (not later than 30 days after the date of publication of the Notice of Initiation)
35	Filing of rebuttal to substantive response to the Notice of Initiation.	§ 351.218(d)(4) (not later than 5 days after the substantive response is filed with the Department)
50	Notification to the ITC that respondent interested parties provided inadequate response to the Notice of Initiation.	§ 351.218(e)(1)(ii)(C)*(1)* (normally not later than 50 days after the date of publication of the Notice of Initiation)
70	Comments on adequacy of response and appropriateness of expedited sunset review.	§ 351.309(e)(ii) (not later than 70 days after the date of publication of the Notice of Initiation)
120	Final results of expedited sunset review where respondent interested parties provide inadequate response to the Notice of Initiation.	§§ 351.218(e)(1)(ii)(B) and 351.218(e)(1)(ii)(C)*(2)* (not later than 120 days after the date of publication of the Notice of Initiation)

[1] Indicates the number of days from the date of publication in the FEDERAL REGISTER of the Notice of Initiation.

[63 FR 13525, Mar. 20, 1998]

ANNEX VIII–C TO PART 351—SCHEDULE FOR FULL SUNSET REVIEWS

Day [1]	Event	Regulation
0	Initiation	§ 351.218(c)
15	Filing of Notice of Intent to Participate by domestic interested parties.	§ 351.218(d)(1)(i) (not later than 15 days after the date of publication of the Notice of Initiation)
30	Filing of Statement of Waiver by respondent interested parties.	§ 351.218(d)(2)(i) (not later than 30 days after the date of publication of the Notice of Initiation)
30	Filing of substantive response to the Notice of Initiation by all interested parties and industrial users and consumers.	§§ 351.218(d)(3)(i) and 351.218(d)(3)(vi) (not later than 30 days after the date of publication of the Notice of Initiation)
35	Filing of rebuttal to substantive response to the Notice of Initiation.	§ 351.218(d)(4) (not later than 5 days after the substantive response is filed with the Department)
110	Preliminary results of full sunset review	§ 351.218(f)(1) (normally not later than 110 days after the date of publication of the Notice of Initiation)
120	Verification in a full sunset review, where needed	§ 351.218(f)(2)(ii) (approximately 120 days after the date of publication of the Notice of Initiation)
160	Filing of case brief in full sunset review	§ 351.309(c)(1)(i) (50 days after the date of publication of the preliminary results of full sunset review)
165	Filing of rebuttal brief in full sunset review	§ 351.309(d)(1) (5 days after the time limit for filing a case brief)

Day [1]	Event	Regulation
167	Hearing in full sunset review if requested	§ 351.310(d)(i) (2 days after the time limit for filing a rebuttal brief)
240	Final results of full sunset review	§ 351.218(f)(3)(i) (not later than 240 days after the date of publication of the Notice of Initiation)
330	Final results of full sunset review if fully extended	§ 351.218(f)(3)(ii) (if full sunset review is extraordinarily complicated, period for issuing final results may be extended by not more than 90 days)

[1] Indicates the number of days from the date of publication in the FEDERAL REGISTER of the Notice of Initiation.

[63 FR 13525, Mar. 20, 1998]

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

Sec.

AUTHORITY: 5 U.S.C. 301, and 19 U.S.C. 1677.

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

EDITORIAL NOTE: Nomenclature changes to part 354 appear at 63 FR 24403, May 4, 1998.

§ 354.1 Scope.

This part sets forth the procedures for imposing sanctions for violation of an administrative protective order issued under 19 CFR 351.306, or successor regulations, as authorized by 19 U.S.C. 1677f(c).

[53 FR 47920, Nov. 28, 1988, as amended at 63 FR 24403, May 4, 1998]

§ 354.2 Definitions.

For purposes of this part:

Administrative protective order (APO) means an administrative protective order described in section 777(c)(1) of the Tariff Act of 1930, as amended; APO Sanctions Board means the Administrative Protective Order Sanctions Board.

Business proprietary information means information the disclosure of which the Secretary has decided is limited under 19 CFR 351.105, or successor regulations;

Charged party means a person who is charged by the Deputy Under Secretary with violating a protective order;

Chief Counsel means the Chief Counsel for Import Administration or a designee;

Date of service means the day a document is deposited in the mail or delivered in person;

Days means calendar days, except that a deadline which falls on a weekend or holiday shall be extended to the next working day;

Department means the United States Department of Commerce;

Deputy Under Secretary means the Deputy Under Secretary for International Trade or a designee;

Director means the Senior APO Specialist or an office director under a Deputy Assistant Secretary, International Trade Administration, or a designee;

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;

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

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;

Proprietary information means information the disclosure of which the Secretary has decided is limited under 19 CFR part 351 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;

Secretary means the Secretary of Commerce or a designee;

Segment of the proceeding means a portion of an antidumping or countervailing duty proceeding that is reviewable under section 516A of the Tariff Act of 1930, as amended.

Senior APO Specialist means the Department employee under the Director for Policy and Analysis who leads the APO Unit and is responsible for directing Import Administration's handling of business proprietary information;

Under Secretary means the Under Secretary for International Trade or a designee.

[63 FR 24403, May 4, 1998]

§ 354.3 Sanctions.

(a) A person determined under this part to have violated a administrative 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 business 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;

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

(5) Issuing a private letter of reprimand.

(b)(1) The firm of which a person determined to have violated a administrative 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).

[53 FR 47920, Nov. 28, 1988, as amended at 63 FR 24404, May 4, 1998]

§ 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 who has information indicating that the terms of an administrative protective order have been violated will provide the information to the Senior APO Specialist 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 or any other person, the director will conduct an investigation concerning whether there was a violation of an administrative protective order, and who was responsible for the violation, if any. No director shall investigate an alleged violation that arose out of a proceeding for which the director was responsible. For the 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)(1) The director conducting the investigation will provide a report of the investigation to the Deputy Under Secretary for International Trade, after review by the Chief Counsel, no later than 90 days after receiving information concerning a violation if:

(i) The person alleged to have violated an administrative protective order personally notified the Secretary and reported the particulars surrounding the incident; and

(ii) The alleged violation did not result in any actual disclosure of business proprietary information. Upon the director's request, and if extraordinary circumstances exist, the Deputy Under Secretary for International Trade may grant the director up to an additional 90 days to conduct the investigation and submit the report.

(2) In all other cases, the director will provide a report of the investigation to the Deputy Under Secretary for International Trade, 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 for International Trade 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 administrative 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 administrative protective order, within the meaning of § 354.6.

(1) Disclosure of business proprietary information to any person other than the submitting party, an authorized applicant, or an appropriate Department official identified in section 777(b) of the Tariff Act of 1930, including disclosure to an employee of any other United States Government agency or a member of Congress.

(2) Failure to follow the terms and conditions outlined in the administrative protective order for safeguarding business proprietary information.

(3) Loss of business proprietary information.

(4) Failure to return or destroy all copies of the original documents and all notes, memoranda, and submissions containing business 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 business proprietary information from the public version of a brief or other correspondence filed with the Department.

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

(7) Use of business proprietary information submitted in one segment of a proceeding in another segment of the

same proceeding or in another proceeding, except as authorized by the Tariff Act of 1930 or by an administrative protective order.

(8) Use of business proprietary information submitted for a countervailing duty investigation or administrative review during an antidumping duty investigation or administrative review, or vice versa.

[53 FR 47920, Nov. 28, 1988, as amended at 63 FR 24404, May 4, 1998]

§ 354.6 Initiation of proceedings.

(a) *In general.* After an investigation and report by the director under § 354.5(c) and consultation with the Chief Counsel, the Deputy Under Secretary for International Trade will determine whether there is reasonable cause to believe that a person has violated an administrative protective order. If the Deputy Under Secretary for International Trade determines that there is reasonable cause, the Deputy Under Secretary for International Trade also will determine whether sanctions under paragraph (b) or a warning under paragraph (c) is appropriate for the violation.

(b) *Sanctions.* In determining under paragraph (a) of this section whether sanctions are appropriate, and, if so, what sanctions to impose, the Deputy Under Secretary for International Trade will consider the nature of the violation, the resulting harm, and other relevant circumstances of the case. If the Deputy Under Secretary for International Trade determines that sanctions are appropriate, the Deputy Under Secretary for International Trade will initiate a proceeding under this part by issuing a charging letter under § 354.7. The Deputy Under Secretary for International Trade will determine whether to initiate a proceeding no later than 60 days after receiving a report of the investigation.

(c) *Warning.* If the Deputy Under Secretary for International Trade determines under paragraph (a) of this section that a warning is appropriate, the Deputy Under Secretary will issue a warning letter to the person believed to have violated an administrative protective order. Sanctions are not appropriate and a warning is appropriate if:

(1) The person took due care;

(2) The Secretary has not previously charged the person with violating an administrative protective order;

(3) The violation did not result in any disclosure of the business proprietary information or the Secretary is otherwise able to determine that the violation caused no harm to the submitter of the information; and

(4) The person cooperated fully in the investigation.

[63 FR 24404, May 4, 1998]

§ 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 administrative 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 for International Trade 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 administrative protective order Sanctions

Board is not necessary. The charged or affected party may request a hearing but at the same time request that a presiding official not be appointed pending settlement discussions. Settlement agreements may include sanctions for purposes of § 354.18. The Deputy Under Secretary for International Trade may amend, supplement, or withdraw the charging letter as follows:

(1) If there has been no request for a hearing, or if supporting information has not been submitted under § 354.13, the withdrawal will not preclude future actions on the same alleged violation.

(2) If a hearing has been requested but no presiding official has been appointed, withdrawal of the charging letter will preclude the Deputy Under Secretary for International Trade from seeking sanctions at a later date for the same alleged violation.

(3) The Deputy Under Secretary for International Trade may amend, supplement or withdraw the charging letter at any time after the appointment of a presiding official, if the presiding official determines that the interests of justice would thereby be served. If the presiding official so determines, the presiding official will also determine whether the withdrawal will preclude the Deputy Under Secretary for International Trade from seeking sanctions at a later date for the same alleged violation.

(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 nonresident.* 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.

[53 FR 47920, Nov. 28, 1988, as amended at 63 FR 24405, May 4, 1998]

§ 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 business 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 administrative 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 business 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 business 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, and unless the party requesting a hearing requests that the Under Secretary not appoint a presiding official, the Under Secretary will appoint a presiding official to conduct the hearing and render an initial decision.

[53 FR 47920, Nov. 28, 1988, as amended at 63 FR 24405, May 4, 1998]

§ 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 administrative 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 business 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 administrative 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 business 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 business 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 administrative 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 administrative 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.

[53 FR 47920, Nov. 28, 1988, as amended at 63 FR 24405, May 4, 1998]

§ 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 administrative 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 business proprietary information in these proceedings, as necessary, under administrative protective order, consistent with the provisions of 19

CFR 351.305(c), or their successor regulations.

[53 FR 47920, Nov. 28, 1988, as amended at 63 FR 24405, May 4, 1998]

§ 354.18 Public notice of sanctions.

If there is a final decision under § 354.15 to impose sanctions, or if a charging letter is settled under § 354.7(b), notice of the Secretary's decision or of the existence of a settlement will be published in the FEDERAL REGISTER. If a final decision is reached, 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. In addition, whenever the Deputy Under Secretary for International Trade subjects a charged or affected party to a sanction under § 354.3(a)(1), the Deputy Under Secretary for International Trade also will provide such information to the ethics panel or other disciplinary body of the appropriate bar associations or other professional associations and to any Federal agency likely to have an interest in the matter. The Deputy Under Secretary for International Trade will cooperate in any disciplinary actions by any association or agency. Whenever the Deputy Under Secretary for International Trade subjects a charged or affected party to a private letter of reprimand under § 354.3(a)(5), the Secretary will not make public the identity of the violator, nor will the Secretary make public the specifics of the violation in a manner that would reveal indirectly the identity of the violator.

[63 FR 24405, May 4, 1998]

§ 354.19 Sunset.

(a) If, after a period of three years from the date of issuance of a warning letter, a final decision or settlement in which sanctions were imposed, the charged or affected party has fully complied with the terms of the sanctions and has not been found to have violated another administrative protective order, the party may request in writing that the Deputy Under Secretary for International Trade rescind the charging letter. A request for rescission must include:

(1) A description of the actions taken during the preceding three years in compliance with the terms of the sanctions; and

(2) A letter certifying that: the charged or affected party complied with the terms of the sanctions; the charged or affected party has not received another administrative protective order sanction during the three-year period; and the charged or affected party is not the subject of another investigation for a possible violation of an administrative protective order.

(b) Subject to the Chief Counsel's confirmation that the charged or affected party has complied with the terms set forth in paragraph (a) of this section, the Deputy Under Secretary for International Trade will rescind the charging letter within 30 days after receiving the written request.

[63 FR 24405, May 4, 1998]

PART 356—PROCEDURES AND RULES FOR IMPLEMENTING ARTICLE 1904 OF THE NORTH AMERICAN FREE TRADE AGREEMENT

Subpart A—Scope and Definitions

Sec.

Subpart B—Procedures for Commencing Review of Final Determinations

Subpart C—Proprietary and Privileged Information

Subpart D—Violation of a Protective Order or a Disclosure Undertaking

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 prescribed 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 control 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) (ii) 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 or 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 nonresident.* 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) *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 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.

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.

(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.

PART 360—STEEL IMPORT LICENSING AND SURGE MONITORING SYSTEM

Sec.

AUTHORITY: 19 U.S.C. 2251, 2253.

SOURCE: 67 FR 79849, Dec. 31, 2002, unless otherwise noted.

§ 360.101 Steel import licensing system.

(a) *In general.* (1) The steel import licensing system includes both the online registration system and the automatic steel import license issuance system. All imports of steel products listed in the President's March 5, 2002, section 201 relief determination, including those products subject to country exemptions or product exclusions, are subject to the import licensing requirements. Information gathered from these licenses will be used to ensure that the purpose of the 201 relief is not undermined, with certain aggregate information reported publicly under the surge monitoring program. An interagency group will assist USTR with the analysis of the data collected beyond the data posted on the surge monitoring program.

(2) A single license may cover multiple products as long as certain information on the license (*e.g.*, importer, exporter, manufacturer and country of origin) remains the same. However, separate licenses for steel entered under a single entry will be required if the information differs. As a result, a single Customs entry may require more than one steel import license. The applicable license(s) must cover the total quantity of steel entered and should cover the same information provided on the Customs entry summary.

(b) *Entries for consumption.* All entries for consumption of covered steel products, other than the exception for ''informal entries'' listed in paragraph (d) of this section, will require an import license prior to the filing of Customs entry summary documents. The license number(s) must be reported on the entry summary (Customs Form 7501) at the time of filing. There is no requirement to present physical copies of the license forms at the time of entry summary; however, copies must be maintained in accordance with Customs' normal requirements. Entry summaries submitted without the required license number(s) will be considered incomplete and will be subject to liquidated damages for violation of the bond condition requiring timely completion of entry.

(c) *Foreign Trade Zone entries.* All shipments of covered steel products into FTZs, known as FTZ admissions, will require an import license prior to the filing of FTZ admission documents. The license number(s) must be reported on the application for FTZ admission and/or status designation (Customs form 214) at the time of filing. There is no requirement to present physical copies of the license forms at the time of FTZ admission; however, copies must be maintained in accordance with Customs' normal requirements. FTZ admission documents submitted without the required license number(s) will not be considered complete and will be subject to liquidated damages for violation of the bond condition requiring timely completion of admission. A further steel license will not be required for shipments from zones into the commerce of the United States.

(d) *Informal entries.* No import license shall be required on informal entries of covered steel products, such as merchandise valued at less than $2,000. This exemption applies to informal entries only, imports of steel valued at less than $2,000 that are part of a formal entry will require a license. For additional information, refer to 19 CFR 143.21 through 143.28.

(e) *Other non-consumption entries.* Import licenses are not required on temporary importation bond (TIB) entries, transportation and exportation (T&E) entries or entries into a bonded warehouse. Covered steel products withdrawn for consumption from a bonded warehouse will require a license at the entry summary.

§ 360.102 Online registration.

(a) *In general.* (1) Any importer, importing company, customs broker or importer's agent with a U.S. street address may register and obtain the user identification number necessary to log on to the automatic steel import license issuance system. Foreign companies may obtain a user identification number if they have a U.S. address through which they may be reached; PO boxes will not be accepted. A user identification will be issued within two business days. Companies will be able to register online through the import licensing and monitoring Web site. However, should a company prefer to apply for a user identification number

non-electronically, a phone/fax option will be available at Commerce during regular business hours.

(2) This user identification number will be required in order to log on to the steel import license issuance system. A single user identification number will be issued to an importing company, brokerage house or importer's agent. Operating units within the company (*e.g.*, individual branches, divisions or employees) will all use the same company user identification code. The steel import license issuance system will be designed to allow multiple users of a single identification number from different locations within the company to enter information simultaneously.

(b) *Information required to obtain a user identification number.* In order to obtain a user identification number, the importer, importing company, customs broker or importer's agent will be required to provide general information. This information will include: the filer company name, employer identification number (EIN) or Customs ID number (where no EIN is available), U.S. street address, phone number, contact information and email address for both the company headquarters and any branch offices that will be applying for steel licenses. This information will not be released by Commerce, except as required by U.S. law.

§ 360.103 Automatic issuance of import licenses.

(a) *In general.* Steel import licenses will be issued to registered importers, customs brokers or their agents through an automatic steel import licensing system. The licenses will be issued automatically after the completion of the form.

(b) *Customs entry number.* Filers are not required to report a Customs entry number to obtain an import license but are encouraged to do so if the Customs entry number is known at the time of filing for the license.

(c) *Information required to obtain an import license.* (1) The following information is required to be reported in order to obtain an import license (if using the automatic licensing system, some of this information will be provided automatically from information submitted as part of the registration process):

i. Filer company name and address;
ii. Filer contact name, phone number, fax number and email address;
iii. Entry type (*i.e.*, Consumption, FTZ)
iv. Importer name;
v. Exporter name;
vi. Manufacturer name (filer may state ''unknown'');
vii. Country of origin;
viii. Country of exportation;
ix. Expected date of export;
x. Expected date of import;
xi. Expected port of entry;
xii. Current HTS number (from Chapters 72, 73, or 99);
xiii. Original HTS number in Chapter 72 or 73 (if HTS number in 12 above is a Chapter 99 product);
xiv. Quantity (in kilograms); and
xv. Customs value (U.S. $).

(2) Certain fields will be automatically filled out by the automatic license system based on information submitted by the filer (*e.g.*, product category, unit value). Filers should review these fields to help confirm the accuracy of the submitted data.

(3) Upon completion of the form, the importer, customs broker or the importer's agent will certify as to the accuracy and completeness of the information and submit the form electronically. After refreshing the page, the system will automatically issue a steel import license number. The refreshed form containing the submitted information and the newly issued license number will appear on the screen (the ''license form''). Filers can print the license form themselves only at that time. For security purposes, users will not be able to retrieve licenses themselves from the license system at a later date for reprinting. If needed, copies of completed license forms can be requested from Commerce during normal business hours.

(d) *Duration of the steel import license.* The steel import license can be applied for up to 60 days prior to the expected date of importation and until the date of filing of the entry summary documents, or in the case of FTZ entries, the filing of Customs form 214. The steel import license is valid for 75 days;

however, import licenses that were valid on the date of importation but expired prior to the filing of entry summary documents will be accepted.

(e) *Correcting submitted license information.* Due to data security issues, it will not be possible to alter an existing license electronically once it has been issued. However, prior to the date of entry summary, filers will be able to cancel previously issued licenses and file for a new license with the correct information. If the filer prefers to have Commerce personnel change the license, there will be a phone/fax option.

§ 360.104 Steel import surge monitoring system.

(a) *In general.* (1) Throughout the duration of the licensing system, Commerce will maintain a surge monitoring Web site that will report certain aggregate information on imports of section 201 product categories obtained from the steel licenses. Aggregate data will be reported on a monthly basis by country of origin and section 201 product category and will include import quantity (metric tons), import Customs value ($U.S.), and average unit value ($/metric ton). The monitoring Web site will also present a range of historical data for comparison purposes.

(2) Reported monthly import data will be refreshed each week with new data on licenses issued during the previous week. This data will also be adjusted periodically for cancelled or unused steel import licenses, as appropriate.

(b) *Excluded products.* At this time, Commerce will not be separately reporting aggregate data on excluded products. However, this information will be available for review by the appropriate government agencies.

§ 360.105 Duration of the steel import licensing program.

The licensing program will be in effect for the duration of the safeguard measures only. Licenses will be required on all subject imports entered during this period, even if the entry summary documents are not filed until after the expiration of the measures. The licenses will be valid for 10 business days after the expiration of the safeguard measures to allow for the final filing of required Customs documentation. Information collected under this system will not be kept longer than the period of time legally required beyond the expiration of these remedies.

§ 360.106 Fees.

No fees will be charged for obtaining a user identification number, issuing a steel import license or accessing the steel import surge monitoring system.

§ 360.107 Hours of operation.

The automatic licensing system will generally be accessible 24 hours a day, 7 days a week but may be down at selected times for server maintenance. If the system is down for an extended period of time, parties will be able to obtain licenses from Commerce directly via fax during regular business hours. Should the system be inaccessible for an extended period of time, Commerce would advise Customs to consider this as part of mitigation on any liquidated damage claims that may be issued.

§ 360.108 Loss of electronic licensing privileges.

Should Commerce determine that a filer consistently files inaccurate licensing information or otherwise abuses the licensing system, Commerce may revoke its electronic licensing privileges. The filer will then only be able to obtain a license directly from Commerce. Because of the additional time need to review such forms, Commerce may require up to 10 working days to process such forms. Delays in filing caused by the removal of a filer's electronic filing privilege will not be considered a mitigating factor by the U.S. Customs Service.