The following communication has been received by the secretariat from the United States Trade Representative.

In accordance with Article 16:6(b) of the Agreement, my authorities wish to inform the committee of a revision to the regulations on anti-dumping duty proceedings (19 C.F.R. Part 353). The purpose of the revision, as described in the summary of the attached notice of Final Rule, is as follows:

"The International Trade Administration hereby revises its regulations on anti-dumping duty proceedings to implement the provisions in Title VI of the Trade and Tariff Act of 1984 concerning anti-dumping duties and to modify in other respects provisions in the version of Part 353 that has been in effect since 1980. The modifications are intended to improve administration of the anti-dumping duty provisions of the Tariff Act of 1930."

*English only/anglais seulement/inglés solamente

89-0542
Part II

Department of Commerce

International Trade Administration

19 CFR Part 353
Antidumping Duties; Final Rule
DEPARTMENT OF COMMERCE
International Trade Administration
19 CFR Part 353
(Docket No. 60604-9015)

Antidumping Duties
AGENCY: International Trade Administration (Import Administration), Department of Commerce.

ACTION: Final rule.

SUMMARY: The International Trade Administration hereby revises its regulations on antidumping duty proceedings to implement the provisions in Title VI of the Trade and Tariff Act of 1984 concerning antidumping duties and modify in other respects provisions in the version of Part 353 that has been in effect since 1980. The modifications are intended to improve administration of the antidumping duty provisions of the Tariff Act of 1930.

EFFECTIVE DATE: The effective date of this Part 353 is [Insert date 30 days after date of publication in the Federal Register], except that the effective date of section 353.22 (a) and (c) of this Part 353 is [Insert date that is the first day of the first month beginning 60 days after the date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small business entities because, to the extent it changes existing practices, the rule simply improves the administration of the antidumping duty regulations. The Department currently is drafting a proposed rule and request for comments on 19 CFR part 353 that was published on August 13, 1986 (51 FR 29046). These comments, and the Department's responses to them, are summarized below.

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Note: We have added as Annex I a consolidated listing of time limits under these regulations.

Sec. 353.2

Comment: One party suggests that the Department include a definition of "administrative review" in this section. This party notes that the Department currently uses the term "proceeding" to refer to a single administrative review. This use, however, conflicts with the proposed definition of proceeding in § 353.2(g), which does not consider a proceeding ended when an order is issued. A definition of "administrative review" would prevent conflicting uses of the term "proceeding," and would clarify that proprietary information obtained in one administrative review may not be used in a subsequent review.

Department's Position: The meaning of "administrative review" is detailed in section 751 of the Act and § 353.22 of these regulations. The use of proprietary information is controlled by the administrative protective order ("APO") itself and by § 353.34(b), paragraph (3)(ii) of which prohibits the use of such information by the party to the proceeding except for "the segment of the proceeding in which it was submitted." To the extent that in practice the Department has not consistently used the term "proceeding" to conform with the definition in these regulations, we are taking steps to remedy this situation.

Sec. 353.2(f)

Note: We have moved to paragraph (f) of this section the definition of weighted-average dumping margin, which was included in the regulation promulgated on August 17, 1987 regarding de minimis dumping margins (published at 52 FR 41685, October 30, 1987).
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We note that in cases involving processing arrangements (e.g., tolling arrangements), the method of calculating the dumping margin and the weighted-average dumping margin may differ from that set forth in the regulation. See, e.g., Small Diameter Welded Carbon Steel Pipes and Tubes from the Philippines, 51 FR 33099 (1986); Brass Sheet and Strip from Canada, 51 FR 44319 (1986).

Sec. 353.2(j)

Comment: One party requests that the Department affirm its practice of presuming that a petitioner has filed an action on behalf of an industry unless and until significant evidence is presented from other domestic producers has been presented. This party also is troubled by the reference to “the like product” (emphasis added) in the first sentence of the proposed regulation. The party argues that use of the word “the,” combined with the Department’s stated intention to consult with the International Trade Commission (“Commission”) on the decision concerning the like product, is overly restrictive, likely to be contentious, and goes beyond the legislative intent of the statute. The party contends that the proposed definition highlights the “industry element of the definition is not integral not only to the Commission’s determinations of injury but also to the Department’s decision on standing under section 732(b)(1) of the Act. The proposed regulatory definition highlights those parts of the definition in section 771(4) of the Act that are relevant to standing.

The part of the definition that refers to “industry” is integral not only to the Commission’s determinations of injury but also to the Department’s decision on standing under section 732(b)(1) of the Act. The proposed regulatory definition highlights those parts of the definition in section 771(4) of the Act that are relevant to standing. The part of the definition that refers to producers of a “major proportion” of the total domestic production is not pertinent to standing because applying it could result in a petition that has the result was not intended by the legislative history does not specifically address standing requirements in discussing the definition of “industry.”

The comment is not adopted.

Sec. 353.2(k)

Note: To be consistent with changes made to the countervailing duty regulations, we have revised paragraphs (k)(1), (k)(4), and (k)(5) to refer to sellers of the like product produced in the United States.

We also note that we are drafting a regulation to implement section 1326(c) of the 1988 Act, which expands the definition of interested parties to include, in investigations involving processed agricultural products, a coalition or association representative of (a) processors, (b) processors and producers, or (c) processors and growers.

Sec. 353.2(l)

Comment: One party suggests the regulation be clarified to indicate that an investigation ends with a notice of suspension of investigation, except when the investigation has been continued under § 353.18(i).

We note that this regulation does not address this issue, and in our view, it must be decided on a case-by-case basis.
Sec. 353.2(m)

Note: As stated in the preamble to the proposed rule, paragraph (m) defines "the merchandise." The definition avoids continual repetition throughout the regulations of the phrase "the class or kind of merchandise imported or sold, or likely to be sold, for importation into the United States, that is the subject of the proceeding."

Sec. 353.2(o)

Comment: All but one party commenting on this section objects to limiting "parties to the proceeding" to only those interested parties that actively participate in a particular decision by the Secretary through the submission of factual information or written argument. Many parties suggest that the definition of "party to the proceeding" continue to be defined as "an interested party that has filed an entry of appearance within 10 days of the publication of a preliminary determination." Some parties argue that the proposed definition is an attempt by the Department to define the standing of the Department must define the term "party to the proceeding." Section 733(b)(2) of the Act limits standing before the Court to "[a]ny interested party who was a party to the proceeding under section 303 of this Act or title VII of this Act. . . ." Those proceedings are administrative processes carried out before the Department and subject to its rules. We believe the Court will benefit from the agency's expertise as to the minimum participation in the administrative process that will make possible the party's exhaustion of its administrative remedies, so that the time of the Court and the parties will not needlessly be spent on matters that could have been addressed and resolved by the agency in the first instance. The Court may disagree in the circumstances of a particular case that adherence to the regulatory requirements was consistent with Congressional intent, but that does not argue for ignoring our obligation to ensure, to the extent possible, the orderly, efficient, and equitable implementation of the law.

Finally, the Department does not believe that the definition places an unreasonable burden on interested parties. To the extent that parties wish to make clear their right to litigate issues raised by other parties, they may incorporate by reference the other parties' comments in whole or in part. If the parties' positions differ, then the Department believes that the second party has an obligation to raise its argument with the administering authority before litigating the issue. Sec. 353.2(s)

Note: We have added a reference to U.S. price in the definition of "reseller" and made other technical changes to clarify the language in this paragraph.

Sec. 353.2(t)

Comment: One party states that the definition of "likely sale" should not be limited to an "irrevocable offer to sell," and suggests modifying the regulation either by dropping the requirement that offers be irrevocable or by creating a rebuttable presumption that all offers are irrevocable. This party also proposes modifying the definition of "likely sale" to include oral offers that are not confirmed in writing. In addition, this party objects to the Department's practice (stated in the preamble to the proposed rule) of considering likely sales only in the event that there are no consummated sales in the relevant foreign markets. It contends that the Department's practice could result in a finding of no dumping, when in fact the presence of offers to sell in the market at less than fair value ("LTFV") may cause the domestic industry injury by forcing it to cut its prices accordingly, regardless of whether actual sales have been made. Department's Position: The Department has defined the term "likely sale" in order to cover the situations where actionable unfair trade practices can be reasonably expected to exist. The issue to be addressed is the likelihood that a sale will be made. In our view, that can occur only when an offer is irrevocable for some time period sufficient to indicate a likelihood of sale. Revocable offers encompass such a wide spectrum of activities as to provide no measure of the likelihood of sales. We have decided to retain the requirement that offers be irrevocable, without adding a rebuttable presumption, because we believe the provision is administrable and reasonable as drafted.

Regarding the practice on consideration of likely sales, the Department continues to believe that sales generally are a more appropriate measure of market activity than are offers. The manner in which the Department defines the period of the investigation will most often deal with the problem identified by the commenter. In the unusual situation where that is not the case, the Department may consider both sales and offers.

Although all of the comments focused on the likely sale issue, we note that section 1327 of the 1988 Act lists the factors to be considered in deciding whether a lease is equivalent to a sale. These factors are the terms of the lease, normal commercial practice within the industry, the circumstances of the specific transaction, the integration of the product into the operation of the lessor or importer, the likelihood of continuation or renewal of the lease over a significant period of time, and other relevant factors, including the possibility of avoidance of antidumping or countervailing duties. Sec. 353.3

Comment: Two parties request that respondents and petitioners not be required to resubmit evidence or documents that are already in the Department's possession. To reduce the burden, the resubmission should be waived if the submitter can identify the location of the requested data in the Department's files. These documents could be made part of the court record.
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without physically inserting them into the record.

Department's Position: The burden that would be created, and the potential disruption to an orderly proceeding that would result, given the enormous volume of records, does not permit the Department to provide this service. See also § 353.34(b)(3)(ii).

We note that in paragraph (a) we have clarified that documents returned to a submitter under §§ 353.31(b)(2) and 353.32(g) will not be included in the official record.

Sec. 353.3(b)

Note: To be consistent with changes made to the countervailing duty regulations, we have altered the second sentence of § 353.3(b) to read as follows: "The record will consist of all material described in paragraph (a) of this section that the Secretary decides is public information within the meaning of § 353.4(a), government memoranda or portions of memoranda that the Secretary decides may be disclosed to the general public, plus public versions of all materials if such lists generally are public information within the meaning of § 353.3(b), and the list of any such information designated by the Secretary as "proprietary," as defined in § 353.3(b)."

Department's Position:

The burden on the submitter to establish the portions of memoranda that the Secretary as proposed. Department behoves this will clarify the public, plus public versions of all is public information within the meaning of have altered the second sentence of to the countervailing duty regulations, we have clarified that documents returned to a submitter under §§ 353.31(b)(2) and 353.32(g) will not be included in the official record.

Sec. 353.3(b)

Note: To be consistent with changes made to the countervailing duty regulations, we have amended § 353.4(a)(4) to read "publicly available laws, regulations, decrees, orders, and other official documents of a country, including English translations." This clarifies that official documents containing proprietary, classified, or otherwise privileged information are not considered to be public information. We also have revised the parenthetical phrase in paragraph (b)(6) so that it now reads "designation of type of customer, distributor, or supplier."

Sec. 353.4

Comment: One party suggests adding to the list of public information, with the burden on the submitter to establish the contrary, items such as price lists distributed to a group of customers and price lists of components and raw materials if such lists generally are publicly available.

Another party contends that the Department's proposed standards for proprietary treatment of information are inadequate. This party argues that the use of a list to define proprietary information is flawed in that it is inflexible and overly narrow, and should be abandoned. For example, under the regulation, factual information in a form that cannot be associated with or used to identify a particular firm nonetheless may be proprietary for that firm. An example would be marketing strategies. This party suggests that paragraph (a)(3) and the exceptions in paragraphs (b)(3) and (b)(6) should be deleted. This party also suggests that the regulations should exclude from public disclosure or release under an APO any proprietary documents requested as part of the response to a questionnaire.

Another party suggests that the destination of sales and designation of type of customers should be considered proprietary information.

Department's Position: Price lists may be public information of a type described in paragraphs (a)(1) or (a)(2) of this section, or proprietary information described in paragraph (b)(5) of this section. We cannot presume that limited distribution of a price list to a specific group of customers constitutes public availability. For example, sellers may circulate different price lists to different groups of customers and expect prospective customers to protect the information as proprietary.

The Department may deviate from the list of normally public information if the submitter presents a convincing argument of harm. Rather than modify § 353.4(a)(3), we will entertain such arguments on a case-by-case basis. Similarly, we will entertain on a case-by-case basis arguments against the parenthetical exceptions listed in § 353.4(b). As we noted in the proposed rulemaking, the list of exceptions reflects our experience with information submitted in proceedings. It attempts to eliminate unnecessary disagreement over documents that generally fall into one category or another.

We note that, to be consistent with changes made to the countervailing duty regulations, we have amended § 353.4(a)(4) to read "publicly available laws, regulations, decrees, orders, and other official documents of a country, including English translations." This clarifies that official documents containing proprietary, classified, or otherwise privileged information are not considered to be public information. We also have revised the parenthetical phrase in paragraph (b)(6) so that it now reads "designation of type of customer, distributor, or supplier."

Sec. 353.6

Note: These rules include the regulation promulgated on August 17, 1987 (52 FR 30660) regarding de minimis dumping margins. The provision has been renumbered from § 353.24 to 353.6.

We have moved the definitions of "dumping margin" and "weighted-average dumping margin" to the general definition section. See § 353.2(f). In accordance with § 353.42(a), we have deleted the reference to "fair value" in the definition of "dumping margin." In addition, we have made technical changes to clarify the language of this section.

Sec. 353.11

Comment: One party suggests that this section should include a reference to the language of Article 5(1) of the Antidumping Code, which states that self-initiation is warranted only "in special circumstances."

Department's Position: As provided in section 732(a)(2) of the Act, the standards for self-initiation are stated in section 731 of the Act. The Department has consistently treated self-initiation as an unusual action.

Sec. 353.11(c)

Note: Paragraph 353.11(c) has been added to implement the persistent dumping monitoring provisions of section 732(a)(2) of the Act, as added by the 1984 Act.

Sec. 353.12(a)

Comment: One party suggests that this section include a certification by the petitioners and anyone involved in preparing the petition regarding the truthfulness and completeness of the petition in order to avoid petitions filed for purposes of chilling legitimate import competition.

Department's Position: The antidumping duty law requires that the allegations in a petition be supported by information reasonably available to the petitioner and that such information accompany the petition. As explained in the legislative history of section 702(b)(1) of the Act, the Department is expected to reject petitions "which are clearly frivolous, not reasonably supported by the facts alleged or which omit important facts which are reasonably available to the petitioner."

H. Rep. No. 317, 96th Cong., 1st Sess. 51 (1979). Congress intended this same standard to apply to antidumping petitions. Id. at 60. We agree that a certification requirement is an appropriate means of deterring the kind of problems described in this legislative history. However, we prefer to apply the certification requirement to all submissions of factual information, not just to those contained in petitions. Accordingly, we are adding to § 353.31 a new paragraph (i), which requires that all submissions of factual information (as defined in § 353.2(g)) be accompanied by an appropriate certification of a responsible official of the submitter and the submitter's legal counsel or other representative, if any. This certification requirement also is incorporated in section 1301 of the 1988 Act. We also are modifying § 353.12(a) of the proposed rule to cross-reference § 353.31(i).

Sec. 353.12(b)

Comment: One party states that the regulation should clarify that the administering authority will determine whether information is "reasonably available" in light of the circumstances of each petitioner. This party suggests clarifying "reasonably available" by revising the language to read "The petition shall contain the following, to the extent reasonably available to the
petitioner under its individual circumstances".

Department's Position: In deciding whether to initiate an investigation, the Department's practice is to take into account the ability of the petitioner to obtain information in support of the petition. The type and quantity of relevant information that is reasonably available to a large corporation in a well-defined industry may not be available to a small company in an emerging or less well-defined industry. The Department's practice of considering the size and nature of the business and industry in deciding what information is "reasonably available" is not changed in this section. Moreover, this rule contains a new paragraph (h) in § 353.12 that specifically provides for technical assistance to small businesses. The Department has consistently provided such assistance on request.

Sec. 353.12(b)(2)

Comment: Two parties express concern that the petition requirements do not include a clause that requires petitioners to state that they are filing on behalf of the major proportion of domestic producers. For example, one party suggested that this section include a requirement that petitioners state whether they represent a majority of the domestic industry in terms of (1) the volume and value of domestic production of the merchandise in question and (2) the number of firms manufacturing the merchandise in the United States.

Department's Position: For purposes of the petition, the Department will continue to rely on the petitioner's representation of industry support. Neither the statute nor the legislative history requires the petitioner to establish affirmatively that it has the support of a particular percentage of the members of an industry. See Department's response to comments on § 353.2(j).

We note that, to be consistent with changes made in the countervailing duty regulations, we have modified the parenthetical phrase in paragraph (b)(2) to clarify that two percent of the industry may be measured either in terms of sales or production levels. In addition, we have modified this provision to clarify that, in deciding whether a person in the industry accounts for two percent or more of the industry, the Department may rely only on publicly available information. The Department includes the two percent cut-off to reduce the potential burden on the petitioner in industries that include a large number of small firms.

(b)(2), the Department does not expect petitioners to obtain business proprietary information from other persons in the industry or otherwise to engage in activity that arguably might call into play the U.S. antitrust laws. We believe there are many methods of gathering the information that would not present a problem.

Sec. 353.12(b)(4)

Comment: One party recommends deleting the word "requested" because it gives the impression that the Department may expand or contract the scope of investigation. The party argues that the Department does not have the authority to modify the scope set forth in the petition.

Another party states that the Department cannot modify the scope beyond the description in the petition unless it allows the self-initiation procedure.

Another party states that the Department's authority to modify the scope of the petition is limited to instances in which the petitioner does not allege the pertinent facts or does not provide the requisite information. This party adds that the Department may self-initiate an investigation of products not specified in the petition if there is information in the petition allowing it to do so. Otherwise, the scope of the investigation should be controlled by the description of the merchandise found in the petition.

Department's Position: The Court of International Trade has acknowledged that the Department has authority to clarify the description of the class or kind of merchandise contained in the petition. Mitsubishi Electric Corp. v. United States, Slip Op. 86-142, 12 CIT (October 31, 1986); Kokusai Electric Co. Ltd. v. United States, Slip Op. 86-29, 10 CIT (March 14, 1986). The Court also has recognized that the Department has the authority to modify the scope of an investigation.

Diversified Products Corp. v. United States, 8 CIT 153, 159 (1983) (citing Royal Business Machines v. United States, 1 CIT 80, 87 n.18 (1980), aff'd, 669 F.2d 691 (Fed. Cir. 1982)). This authority is important for the purpose of ensuring that the Department's orders are administrable, clear, enforceable, and adequate to protect the U.S. industry from the unfair trade practices covered by the statute. When defining the class or kind of merchandise, the Department may, for example, rely on information not available to the petitioner and conclude that the petitioner's statement of class or kind is inadequate to prevent easy circumvention of the order.

We note that we have modified this paragraph to delete the reference to the Tariff Schedules of the United States. The reference to "U.S. tariff classification" in the final rule covers the Harmonized Tariff System, effective in the United States on January 1, 1989. Sec. 353.12(b)(6)

Comment: One party objects to the requirement that petitioners provide the proportion of total exports to the United States from each person alleged to have sold merchandise at less than fair value. They argue that the information is often difficult or impossible for the petitioner to obtain, and that the requirement is contrary to Congressional intent to reduce the cost of filing a petition. They suggest that this requirement be deleted.

Department's Position: The Department uses information on exports to the United States in the preparation of questionnaires and the review of questionnaire responses. Therefore, to the extent that this information is reasonably available to the petitioner, it should be reported in the petition. To the extent that it would be unduly burdensome, difficult, or impossible for a petitioner to obtain this information, the petition would be acceptable without it. As noted in the Department's position on paragraph (b)(2) of this section, the petitioner may rely on publicly available information.

Sec. 353.12(b)(7)

Comment: One party states that because the preferred methodology for calculating foreign market value is to use home market prices, the Department should expressly require that the petition contain information on home market prices when "reasonably available to the petitioner." This party suggests adding the following language to this section: "(If unable to furnish information on foreign sales or costs after reasonable effort * * *)"

Department's Position: The commenter is correct as to the preferred methodology for calculating foreign market value. We note that the information to be submitted is the factual information that is relevant to U.S. price and foreign market value "in accordance with Subpart D." That subpart evidences the preference for home market prices, third country prices, or constructed value, in that order. The Department will evaluate the adequacy of a petition in light of the preferences stated in Subpart D.

Sec. 353.12(b)(8)

Note: We are drafting a proposed rule and request for comments to implement the 1988
Sec. 353.12(d)

Comment: One party argues that the Department should not dismiss a petition because of information for which proprietary treatment is improperly claimed if that information is not essential to support the petition (as would happen under the proposed regulation). This party recommends that, instead of completely dismissing the petition, this section should be changed to state that the Department will determine within 10 days of submission of the petition whether the information is entitled to proprietary treatment, and if the Department denies proprietary treatment, the petitioner will be allowed seven days to cure the defect.

Department's Position: Because the petitioner can easily resubmit the petition in proper form, we believe that it is in the petitioner's interest to do so. Otherwise, if the information which does not comply with § 353.32 is essential, the Department would decide under § 353.13 that the petition does not properly allege the basis on which an antidumping duty may be imposed. Nevertheless, we agree that the choice is the petitioner's and have revised paragraph (d) accordingly.

Sec. 353.12(g)

Comment: One party argues that the Department should notify not only the country in which the merchandise is produced but also any country that the petition alleges is an intermediate country for the importation of the merchandise and is likely to be used to calculate foreign market value.

Department's Position: At the time a petition is filed, only the home market country (or countries) is known for certain, which is why § 353.12(g) requires only that a representative of that country be served. The Department, however, will make a petition available to a representative of an intermediate country if one is identified either in the petition or during the course of the investigation.

Sec. 353.12(f)

Comment: One party argues that the section is unnecessarily broad in prohibiting, prior to initiation, oral or written communication from interested parties regarding a petition. This party states that the paragraph on pre-initiation communications with the Department is more restrictive than the decision of the Court of Appeals in United States v. Rose, Inc., 706 F.2d 1570 (Fed. Cir. 1983). The commenter contends that the Department can consider communications regarding procedural defects in the petition (such as the standing of the petitioner), provided that the communications are on the record and with adequate notice to petitioners. This party also believes the Department should permit interested parties to bring to the Department's attention matters in the public domain.

Department's Position: Paragraph (i) is consistent with the Roses decision. Paragraph (i) limits the restriction on communication to interested parties defined in paragraphs (k)(1) or (k)(2) of § 353.2, which means that the Department will accept communications from domestic interested parties defined in paragraphs (k)(3) through (k)(6) of § 353.2. The Court in Roses held that under no circumstances was the Department to engage in an advocacy proceeding based on information from potential respondents at the pre-initiation stage of the proceeding. Id. at 1567. We believe that this holding precludes the Department from making fine distinctions between law and fact, procedure and substance, and from determining whether information is in the public domain, especially because the Department would have to accept and review correspondence in order to make such distinctions. Such a review of correspondence would lead to needless and time-consuming disputes as to whether the Department had abided by the ruling in Roses in a particular case.

We note that if a U.S. producer of the like product (§ 353.2(k)(3)) or any other domestic party communicates with the Department as an agent of a potential respondent, the prohibition in paragraph (i) would apply to that communication.

Sec. 353.13

Comment: One party suggests that the notice of initiation should clearly state the scope of the investigation. They add that this coverage cannot be extended later to merchandise not included in the notice of initiation, because to do so would deny the parties adequate notice.

Department's Position: The Court of International Trade has recognized that the Department has the authority to define the scope of an investigation. Diversified Products Corp. v. United States, 6 CIT 155, 159 (1983) (citing Royal Business Machines v. United States, 3 CIT 830, 832 (1981), aff'd 669 F.2d 691 (Fed. Cir. 1982)). The Department consults closely with the petitioner, the Commission, and others to ensure that the notice of initiation describes the scope of the investigation as accurately as possible. In certain circumstances, however, the scope of the investigation set forth in the notice of initiation must be expanded or contracted to take account of facts discovered after initiation. For example, the scope of an investigation sometimes must be expanded to prevent circumvention. See, e.g., Mitsubishi Electric Corp. v. United States, Slip Op. 88-152, 12 CIT ___ (October 31, 1988).

In addition, the scope must be contracted when it is determined that a petitioner has not filed on behalf of an industry that produces a particular like product previously included in the class or kind of merchandise subject to investigation. See, e.g., Oil Country Tubular Goods from Israel, 52 FR 1649, (1987); Certain Textile Mill Products and Apparel from Sri Lanka, 50 FR 9626 (1985). Moreover, the scope of an investigation and any antidumping order that results is subject to clarification of its intended coverage. Gold Star Co., Ltd. v. United States, Slip Op. 88-102, 12 CIT ___ (July 31, 1988). Certain Textile Mills Co., Ltd. v. United States, Slip Op. 86-29, 10 CIT ___ (March 14, 1986). In the event it becomes necessary for the Department to modify or clarify the scope of an investigation, it is the Department's practice to inform all parties to the proceeding.

Department did not modify or clarify the scope when warranted, the interests of all parties could be seriously jeopardized. See also the Department's response to comments on § 353.12(b)(4).

Sec. 353.14

Comment: Several parties comment that the 30-day time limit on submission of requests for exclusion is too short. Some companies may not learn about the investigation in 30 days or, even if they do, may not have time to prepare the request described in this section.

One party argues that elimination of the possibility of requesting an exclusion after the 30-day period will deny interested parties the right to have the circumstances of their transactions analyzed. These parties suggest the time limit be extended to the date when the questionnaire response is due.

Two parties contend that the requirement that certification of the request be obtained within the 30-day time limit is totally unrealistic, and that this certification is unnecessary and could serve to deter meritorious requests for exclusion.

One party requests clarification as to when a firm may be excluded under an antidumping order, i.e., will a company be excluded automatically if the Department determines that it has no dumping margin during the investigatory period, or must it formally apply for exclusion. Two parties suggest that the Department automatically exclude from
a final determination all companies investigated and found to be receiving zero (de minimis) dumping margins.

Two parties suggest that notices of initiation should list the companies to whom questionnaires will be sent and clearly state that any foreign producer or reseller not listed which wishes to be excluded should submit a request within the specified time limit. These parties urge that those companies that do request exclusion and submit a questionnaire response within the time limits must be investigated. Any company submitting a questionnaire response and not investigated should be given a zero dumping duty deposit rate if an antidumping duty order is issued.

*Department's Position:* The deadline for submission of requests for exclusion is 50 days from the date the petition is filed, because initiation normally occurs on the day after the petition is filed. In most cases, 50 days should be a reasonable period of time for preparation of the request.

The Department cannot extend the deadline for filing requests for exclusion beyond the 50-day period set forth in the petition, because it must decide by that date, or shortly thereafter, which companies it will investigate and to which it will send questionnaires. If the certifications were not submitted by the deadline for submitting questionnaire responses, the Department would not have sufficient time to issue questionnaires, analyze responses, and prepare for verification.

The certifications in this section are required in order to ensure that the requests are carefully considered by all parties that have relevant information. The certificates are required because the Department must make a preliminary determination before it concludes that it could not do so within the statutory time limits on investigations. Such refusal might occur, for example, in a case in which an extraordinarily large number of requests for exclusion are submitted. If the Department refuses to investigate a request for exclusion, the requestor may be excused from submitting an antidumping duty order by requesting a revocation under § 353.25(b). Neither the GATT nor U.S. law requires the Department to investigate every request for exclusion or every company that produces or resells under investigation. For the same reasons, we cannot assign a zero rate to companies that submit a voluntary response but are not investigated. If a company is found during an administrative review to have no dumping margin, any cash deposit will be refunded with interest.

*Sec. 353.15*

**Comment:** Two parties suggest that the basis for a preliminary determination should remain as "best information available," rather than the proposed "information available." One of these parties suggests that when respondents cooperate in the investigation, the best information available is the respondent's reply to the questionnaire when verification occurs after the preliminary determination.

In addition, one party recommends that when a petitioner requests a postponement of the preliminary determination, the Department should conduct verification prior to the preliminary determination. Another party suggests that the proposed regulation should require verification before a preliminary determination in all but exceptional circumstances. This party argues that the methodologies used in a final determination often are not focused on until after verification; if verification occurs after the preliminary determination, parties will not be able to comment on the methodologies used in the final determination, which will continue to foster more court appeals.

One party suggests that the Department be required to issue and publish a corrected preliminary determination as soon as it discovers clerical error.

*Department’s Position:* Section 776 (b) and (c) of the Act and § 353.37 of these regulations specify the limited conditions in which the Department may use "best information available" in lieu of information submitted by respondents. As explained in the preamble to the proposed rule, paragraph (a) of this section refers to "available information" in order to indicate that the Department may base its preliminary determination on any information available to it at the time.

"Available information" includes, but is not necessarily limited to, the respondent's submissions. For example, even prior to verification, the Department may know that respondent's submissions are incomplete or demonstrably incorrect. In that event, the Department may use apparently accurate information from other sources.

Whenever there are adequate time and resources for verification prior to a preliminary determination, the Department will conduct the verification prior to the date of the preliminary determination in order to make its preliminary determination more accurate. In practice, the Department usually conducts verification after the preliminary determination, even when the petitioner requests an extension of the date for the preliminary determination. Normally the petitioner requests an extension for the purpose of permitting the Department to obtain additional information from the respondent. Preparation of the supplemental questionnaires and submission and review of responses
consumes 25 to 45 days of the extension period. Verification is conducted only after the Department has provided each respondent with an adequate opportunity to submit the information requested by the Department. The on-site verification, including associated preparation and report-writing, normally requires 30 to 40 days. Because the period of the extension under paragraph (c) of this section is not more than 50 days, there is in most cases insufficient time for verification prior to the date of the preliminary determination.

Facts available to the Department at an early stage of the investigation are limited in comparison with those available later in the investigation. Preliminary determinations are simply interim decisions intended to focus issues and provide the basis for comment by the parties to the proceeding. They are not subject to judicial review. One important effect of a final determination is to correct inaccuracies in the preliminary determination. Therefore, an additional procedure for correcting errors in a preliminary determination would be an unwarranted waste of the Department’s scarce resources. We have established a practice of correction of clerical errors in final determinations and final results, which also is provided for in section 1333 of the 1989 Act. Sec. 53 FR 41617 (October 5, 1988): 53 FR 5813 (February 13, 1988).

Sec. 353.15(a)

Comment: One party suggests that paragraph [a][2][i] should be modified to indicate that preliminary determinations will include administrative and judicial precedents on which legal conclusions are founded.

Department’s Position: The suggestion that the Secretary’s determination recite legal precedent would impose a burden not required by the statute. To the extent necessary to explain the determination, the Department does discuss legal precedents in its preliminary determinations. In view of the fact that the preliminary determination is not subject to judicial review and is subject to revision in the final determination, any additional discussion of administrative and judicial precedents is unnecessary.

We note that because section 733(b) of the Act provides that the Department must have a reasonable basis to believe “or suspect” that merchandise is being sold, or is likely to be sold, at less than fair value, we have added the words “or suspect” to paragraph (a) of the regulation.

Sec. 353.15(b)

Comment: One party suggests that paragraph [b] should provide, as an additional reason for postponement, the consideration of requests for exclusion or “the calculation of individual margins for one or more producers or exporters.” Another party suggests that requests for postponements in extraordinarily complicated cases should be available to petitioners and respondents on an equal basis.

Department’s Position: The Department’s authority to extend the time limit for issuing a preliminary determination is “narrowly circumscribed” by the statutory criteria set forth in paragraph [b](2). See S. Rep. No. 248, 96th Cong., 1st Sess. 66 (1979). Section 733(c)(1)(B) of the Act does not permit consideration of additional criteria for allowing an extension of time.

Sec. 353.15(g)

Comment: Two parties suggest that the disclosure conference should provide a “complete” rather than a “further” explanation of the preliminary determination. These parties urge the Department to disclose all calculations and computer programs used in making the determination.

Department’s Position: We have clarified that the purpose of disclosure is only to provide an explanation of the calculation methodology used in a determination.

Sec. 353.15(a)

Comment: One party contends that the Department does not have statutory authority to self-initiate an investigation of critical circumstances, and that the Department should not substitute its perception of what is in the petitioner’s interest for that of the petitioner.

Department’s Position: Although section 733(e) does not expressly authorize the Department to find critical circumstances in self-initiated investigations, the Department in such cases is considered the petitioner and, as such, has authority to allege and to investigate critical circumstances. Under a similar interpretation of the statute, the Department has determined that in a self-initiated investigation the administering authority is the “petitioner” and may, in appropriate circumstances, withdraw its petition and terminate the investigation. See, e.g., Certain Steel Products from Belgium, Brazil, France, Romania, South Africa, and Spou, 47 FR 5754 (1982). An interpretation of the law that would exclude critical circumstances from the purview of self-initiated investigations would be inconsistent with the Congressional desire for vigorous enforcement of the unfair trade laws. See, e.g., H.R. Rep. No. 317, 96th Cong., 1st Sess. 51 (1979).

Sec. 353.16(b)

Comment: One party notes that under proposed § 353.16(b), the Department cannot make a preliminary finding of critical circumstances and suspend liquidation until it has issued its preliminary determination. This party contends that such a delay in making a critical circumstances determination is contrary to the statutory purpose underlying the critical circumstances provisions of the antidumping law. i.e.: “the deterrence of import surges through the Department’s prompt determination of whether critical circumstances exist.” The party notes, however, that under the GATT Antidumping Code, provisional measures, including the suspension of liquidation, cannot be implemented until an affirmative preliminary determination of dumping has been made. This party suggests, therefore, that the Department revise this section to provide that, if an allegation of critical circumstances is submitted with the petition, or within 60 days of the filing of the petition, and is deemed to warrant investigation, the Department will make a preliminary determination on an expedited basis, will delay verification until after the preliminary determination, and will provide an extension to respondents in the process of submitting information to consider in making a preliminary determination.

Department’s Position: We have revised paragraphs [b][2][i], (c), and (g) to permit the Department to issue a preliminary critical circumstances finding before the date of the preliminary determination under § 353.15 in appropriate cases. (We note that this requirement also is provided in section 1324 of the 1988 Act.) If a preliminary critical circumstances finding is made before the date of the preliminary determination, suspension of liquidation will take effect only at the time of, and in the event of, an affirmative preliminary determination. In order to make an affirmative preliminary finding of critical circumstances, the Department must find: (1) that there is a history of dumping in the United States or elsewhere of the merchandise, or that the importer knew or should have known that the producer or reseller was selling the merchandise at LTFV; and (2) as explained in the Department’s position on comments on paragraphs (f) and (g), that imports have increased...
significantly during a relatively short period. A "relatively short period" is defined in paragraph (g) as normally at least the three-month period beginning either on the date the proceeding begins or, when appropriate, a period of not less than three months from the date prior to the initiation of the proceeding on which importers or exporting producers or resellers had reason to believe that a proceeding was likely. Because the preliminary determination in an antidumping investigation generally is not issued until the 100th day of the investigation, the Department examines at least a three-month period when determining whether critical circumstances exist (as opposed to approximately a three-month period in a countervailing duty investigation).

For example, in the recent antidumping investigation of Butadiene Acrylonitrile Copolymer Synthetic Rubber from Japan, 53 FR 15436 (1988), we examined a five-month period in determining the existence of critical circumstances, because of the longer time period between initiation of an antidumping investigation and the preliminary determination, as compared to the time period in countervailing duty investigations.

Sec. 353.16(c)

Note: We have modified paragraph (c) to provide that the suspension of liquidation results from a finding under this section will be made only at the time of or after an affirmative preliminary determination under § 353.15. See Department's response to comments on § 353.16(b). In addition, we have revised this paragraph to clarify that suspension of liquidation would apply only to entries covered by the affirmative critical circumstances finding. We also have made technical changes to paragraph (c) to clarify the language of this paragraph.

Sec. 353.16(d)

Comment: Two parties contend that neither the Department nor the Customs Service has authority to order the retroactive collection of a cash deposit or posting of a bond, and that the Department's authority in the event of a preliminary affirmative critical circumstances decision is limited to ordering the retroactive suspension of liquidation. These parties suggest, therefore, that we delete the reference in paragraph (d) to cash deposit and bond, and clarify that an affirmative finding of critical circumstances does not result in retroactive collection of deposits or posting of bonds.

Department's Position: The authority to impose retroactively a bond or cash deposit requirement is stated by implication in section 735(c)(3)(B) and (c)(4) of the Act. If Congress did not intend retroactive bonding or cash deposits, these provisions of the Act would be superfluous because there would be nothing to release or refund.

Sec. 353.16(e)

Comment: One party suggests that the Department should be subject to the same time limits for making findings in self-initiated investigations (paragraph (e)) as in investigations based on petitions (paragraphs (b) and (d)). Because the same standard for determining critical circumstances applies to all investigations.

Department's Position: Paragraph (e) provides that the time limits relating to the submission of critical circumstances allegations by the petitioner do not apply in self-initiated investigations. This paragraph gives the Department maximum flexibility to make critical circumstances findings early in self-initiated investigations.

Sec. 353.16(f)

Comment: Several parties advocate elimination of the reference in paragraph (f) to a 15 percent increase in imports over imports during an "immediately preceding" period. They contend that a 15 percent increase in imports is not necessarily indicative of circumventing behavior that would warrant application of the retroactivity provisions of the law. They note that such an increase could reflect normal commercial responses to changed market conditions, to normal business growth, or to compliance with contracts entered into months earlier. Some of these parties believe that application of the 15 percent standard, even though it is not an absolute standard, may lead to arbitrary results and may discourage imports. On the other hand, one of these parties emphasizes that in some cases (even those in which imports have not accounted for a preponderance of U.S. apparent consumption) the 15 percent standard may be too high. Several parties object to the statement in the preamble of the proposed rule that in cases where imports account for a "preponderance" of U.S. apparent consumption, an increase in imports of less than 15 percent may be massive. One party argues that market share is irrelevant to the issue of whether imports are "massive," and believes it is inappropriate to penalize, by using a lower threshold for invoking the critical circumstances provision, imports that have achieved a large share of the market without some evidence that their share is the result of dumping. Another party argues that there is a discrepancy between the explanation of § 353.16(f) and the language of the regulation itself.

with respect to the increased import amounts. Specifically, this party seeks clarification as to the provision in the proposed regulation that states the Secretary will not consider imports massive unless they have increased by "at least 15 percent" and the statement in the preamble to the proposed rule that "the Secretary might consider the imports massive, even if the increase is less than 15 percent . . . ."

Some of the parties that object to the 15 percent standard suggest dropping it in favor of a completely ad hoc analysis based on consideration of historical and seasonal import patterns and other factors relevant to the decision whether the increase in imports is an attempt to circumvent the law. One party suggests that if the Department retains the 15 percent standard, the Department should provide that any increase of less than 15 percent (even if imports accounted for a preponderance of U.S. apparent consumption) will not be considered massive. Another party suggests adding to paragraph (f) a statement that any interested party may submit evidence to rebut the presumption created by the 15 percent general rule. That party also would delete the reference to "immediately preceding period" and would insert reference to a longer historical period, preferably three years. Other parties suggest raising the 15 percent standard to 20 or 50 percent, or adding a requirement that the increase also must have accounted for five percent of total consumption.

Department's Position: Neither the Act nor the legislative history defines "massive imports." The Department, however, has concluded for the following reasons that, in order to be "massive," imports must increase significantly in relation to prior import levels or U.S. apparent consumption: (1) section 733(e)(1)(B) of the Act requires "massive imports . . . over a relatively short period," a test that appears to require a surge in imports over "normal" levels; (2) the purpose of the critical circumstances provision is to prevent circumvention of the law; a purpose that presupposes an increase in import activity associated with the possibility of assessment of antidumping duties; and (3) the requirement is consistent with the Department's established practice in defining the term "massive imports." The degree of increase required logically would depend to some extent on the size of the import volume in relation to total U.S. apparent consumption. Moreover, the Department would consider an argument in a particular case that it is
unreasonable to infer that the increase in imports is attributable to the filing of a petition or the expectation of the filing of a petition. As noted in the preamble to the proposed rule, "[t]he criteria described in the proposed rule are intended to clarify the bases for the Secretary's critical circumstances findings without adversely affecting the Secretary's administrative discretion." 51 FR 29049 (1986). Any interested party may submit information to establish that an increase of less than 15 percent is massive or that an increase of more than 15 percent is not massive under the circumstances. For example, a party may argue that a 15 percent increase is not massive in the case of a new product where the market for the product is expanding rapidly. Any interested party may also submit information showing that the increase is a seasonal import trend unrelated to the investigation, the Department finds that importers or exporting producers or resellers had knowledge that an increase in imports during the "relatively short period" is normal and appropriate.

At this time, the Department has had insufficient experience with this provision to establish a definitive list of criteria for deciding whether importers or exporting producers or resellers had "reason to believe" that a "proceeding was likely." When appropriate, we will develop such a list.

We note that we have revised this paragraph to permit the Department, when appropriate, to issue a critical circumstances finding prior to the date of the Department's preliminary determination under § 353.15. See Department's response to comments on § 533.16(b).

Sec. 353.17(a)  
Comment: One party is concerned that the proposed rule does not ensure an adequate basis for the Department to evaluate the public interest under this paragraph. This party recommends revising paragraph (a) to require petitioners, on withdrawal of a petition, to certify whether they have knowledge of, or reason to believe that there is, any agreement by the foreign government or the industry of the country subject to the investigation to restrain export prices or quantities to the United States, or whether any such restraints have been, or are expected to be, implemented as an inducement to withdrawal of the petition. If the certification is affirmative, before terminating the investigation, the Department should follow the procedures for the public interest determination that are set forth in paragraphs (b)(1) and (b)(2) of this section.

Department's Position: The certification requirement proposed by the commenter is unnecessary. The obligation to consider the public interest gives the Department sufficient authority to obtain from interested parties all relevant information concerning withdrawal of petitions. The requirement that the Department consider whether a termination agreement serves the public interest derives from the 1979 legislative history of section 734(a) of the Act, which states, "The committee intends that an investigation be terminated under section 734(a) only if the authority or the ITC, as the case may be, determines that termination will serve the public interest." S. Rep. No. 249, 96th Cong., 1st Sess. 70-71 (1979). This requirement was articulated in § 533.41(a) of the current regulations and is carried over into this paragraph. If withdrawal is in fact based on a quantitative restraint agreement, the Department applies the provisions in paragraph (b) of § 533.17. Those provisions implement an amendment to section 734(a) of the Act, which provides more detailed public interest criteria for terminations based on quantitative restraint agreements.

Sec. 353.17(b)  
Comment: One party suggests clarifying in paragraph (b)(2) that the Department will consult with other U.S. Government agencies before making the public interest determination.

Department's Position: Paragraph (b)(2) restates the statutory requirement set forth in section 734(a)(2)(C) of the Act. As a matter of practice, the Department consults with other agencies, when appropriate, on issues affecting the public interest determination under this paragraph. See also § 533.38(a).

Sec. 353.18(c)  
Note: We have made technical changes to paragraph (c) to clarify the language of this paragraph.

Sec. 353.18(d)  
Comment: One party believes it is important to enhance the ability of the domestic industry to influence the Department's decision whether "extraordinary circumstances," as defined in this paragraph, exist. An affirmative decision is based in part on
a finding that "suspension of the investigation will be more beneficial to the industry than continuation of the investigation." The party recommends requiring the foreign respondent and the government to submit any proposed suspension agreement at the time they submit the questionnaire response. The domestic parties then would have 14 days to comment and indicate their willingness to accept the agreement. If a majority of the domestic producers (in terms of volume of sales) or importers do not indicate acceptance, the suspension agreement should not be pursued.

Department's Position: The legislative history of section 734(c)(2) of the Act states that "the language of the statute is general so as to provide the Authority with flexibility in administering the provision. However, the provision is not intended to be so general as to be meaningless." H.R. Rep. No. 317, 96th Cong., 1st Sess. 65 (1979).

The Department recognizes the importance of obtaining the views of the domestic industry on whether "extraordinary circumstances" exist. We believe, however, that more than a one-time head count of proponents and opponents (even if weighted by volume of sales) is required for the Department to make a reasonable decision on this issue. The Department's preliminary conclusion about whether suspension would be beneficial to the domestic industry should focus more on the specific language of an initial draft agreement. The comments and views of all interested parties regarding specific draft proposals, and even suspension itself, may change significantly as the investigation progresses.

Moreover, to the extent practicable, all interested parties should have the opportunity to evaluate the possibility of a suspension of investigation in light of the Department's preliminary determination under § 353.15, an opportunity that would not exist under the requirements described by the commenter. Under § 353.18(g), the Department consults with the petitioner and affords the petitioner a right to comment on specific draft language. The Department concludes an agreement only if it determines that the agreement is in the public interest, including the interest of the domestic industry.

Comment: One party comments that, in order to ensure that effective monitoring of an agreement is practicable, this paragraph should be revised. Specifically, the party objects that the second sentence of paragraph (e) relieves the Department of the obligation to collect pricing information necessary for the effective monitoring of suspension agreements, and urges that it be deleted. Rather, the Department should require foreign respondents to submit on a quarterly basis the price at which they sell the merchandise in the U.S. and home markets, indicating any change from the period originally investigated. This information should be accompanied by a listing of claimed adjustments and the extent to which the adjustments differ from the period originally investigated.

Department's Position: Although the Department recognizes the importance of effective monitoring, we have not adopted the commenter's suggestion. Paragraph (g)(1)(i) provides that each suspension agreement shall contain a statement of the procedures for monitoring compliance with the agreement. The monitoring provisions of each agreement specify the types of information to be submitted. In practice, the Department requires submission of relevant information on a quarterly basis. The Department may consider it necessary to require all of the information identified by the commenter, but does not believe it is necessary or appropriate to require such information in cases where it is not needed.

The second sentence of paragraph (e) does not relieve the Department of its obligation to monitor effectively each suspension agreement. If appropriate, the Department will obtain price information described in that sentence. The purpose of permitting suspension of investigations is, as the Department's Position notes, to permit "rapid and pragmatic resolutions of antidumping duty cases." Id. at 71. See also H.R. Rep. No. 317, 96th Cong. 1st Sess. 63-64 (1979). The purpose of permitting suspension of investigations is, as the commenter notes, to permit "rapid and pragmatic resolutions of antidumping duty cases." Id. at 71. See also H.R. Rep. No. 317, 96th Cong. 1st Sess. 63-64 (1979). In practice, however, it is difficult to reach a pragmatic resolution of cases, especially complex cases, in significantly less time than that allowed by the statute. The Department proceeds cautiously in signing suspension agreements to ensure that all statutory criteria, including the public interest criteria, are satisfied. Therefore, we have not adopted the suggestion that suspension agreements be concluded no later than the preliminary determination.

Another party notes that this paragraph continues to permit the Department to suspend an investigation up to the date of its final determination, even though the purpose of a suspension agreement is to permit rapid resolution of antidumping cases, with a minimum expenditure of resources by all parties involved. The party recommends that paragraph (g)(1) be changed to require that: (1) foreign respondents and governments submit any proposed suspension agreement no later than the date on which they submit their responses to the Department's questionnaire; (2) the domestic interested parties be given a reasonable time thereafter to comment on the proposed agreement; and (3) the Department make a final decision on the proposed suspension agreement no later than the scheduled date for the preliminary determination.

The statute and legislative history clearly permit the Department to conclude a suspension agreement any time prior to its final determination. Sec. e.g., S. Rep. No. 249, 96th Cong. 1st Sess. 68-69 (1979). The purpose of permitting suspension of investigations is, as the commenter notes, to permit "rapid and pragmatic resolutions of antidumping duty cases." Id. at 71. See also H.R. Rep. No. 317, 96th Cong. 1st Sess. 63-64 (1979).
We note that, to be consistent with changes made to the countervailing duty regulations, we have modified paragraph (g)(1) to clarify that the service requirement only applies to a proposed agreement preliminarily accepted by the Department. Draft proposed suspension agreements submitted to the Department on or before the 45th day for review under paragraph (g)(1) need not be served on other interested parties. We also are amending § 353.31(g) specifically to exempt submissions under paragraph (g)(1)(i) from the general service requirements. The 15-day period between the deadline for submission of an initial draft agreement (paragraph (g)(1)(ii) and service of an agreement preliminarily accepted by the Department to the petitioner and other interested parties (paragraphs (g)(1)(ii) and (g)(2)(i)) is intended to give the Department, not interested parties, an opportunity to review and, if appropriate, suggest modifications to the proposed agreement. The petitioner and other interested parties have ample opportunity to comment beginning on the date specified in paragraph (g)(2)(i).

Sec. 353.18(g)(2)(i)

Comment: One party proposes that this section be modified to indicate that when the Department is aware, or has reason to believe, that another U.S. Government agency may be interested in commenting on a proposed suspension agreement, that agency will be notified at the same time notice is given to parties to the proceeding.

Department's Position: The Department makes every effort to ensure that other U.S. Government agencies will have an opportunity to comment on proposed suspension agreements.

Sec. 353.18(g)(2) and (g)(3)

Comment: One party states that the consultation requirement in paragraph (g)(2)(ii) should provide explicitly that, on request by the petitioner, the Department will meet and discuss with the petitioner the proposed suspension agreement. This party believes that, although the consultation requirement is stated in the current regulations, the Department has interpreted the requirement to be satisfied by allowing the petitioner to submit written comments on the agreement.

Regarding paragraph (g)(3), one party suggests changing the deadline for submitting written argument and factual information from five days to at least two weeks prior to the final determination, in order to provide adequate time for consideration of the submissions.

Department's Position: The regulation as drafted addresses the commenter's concerns. Paragraph (g)(2)(ii) provides for consultation and paragraph (g)(3) provides for submission of written argument and factual information concerning the proposed suspension agreement. The regulation draws a clear distinction between the two types of communication. As a matter of practice, the Department affords the petitioner in each case the opportunity for “complete disclosure and discussion.” S. Rep. No. 249, 96th Cong., 1st Sess. 71 (1979).

We agree that five days allows the Department too little time in which to consider written argument and factual information. Accordingly, we have changed paragraph (g)(3) to establish the deadline for submissions as 10 days prior to the final determination. To limit the deadline to two weeks, as suggested, would unnecessarily restrict the Department's access to relevant information and argument. The Department would sign a suspension agreement prior to the scheduled date for the final determination only after the Department has given all interested parties the opportunity to consult and comment on the proposed agreement. This paragraph necessarily establishes only the maximum conceivable time limit on submissions.

Sec. 353.18(i) and (j)

Comment: One party suggests that paragraph (j)(2) include a statement of the effect of a negative final determination by the Department or the Commission.

Regarding paragraph (j), one party contends that there is no statutory authority for prohibiting entry of merchandise, as provided in paragraph (j)(2). This party believes that imports in excess of the limits in a quantity restriction agreement are merely a violation of the agreement, and should be treated as such under § 353.39.

Department's Position: The effect of a negative final determination by the Department or the Commission is stated in § 353.17(c). We are adding to this paragraph, however, a sentence to clarify the effect of a negative final determination on a suspension agreement, in accordance with section 734(f)(3)(A) of the Act.

The Department may order Customs to limit or exclude entry of merchandise under paragraph (j)(2) and may also determine under § 353.19 that the agreement has been violated. Paragraph (j)(2) is necessary for the Department to ensure that exports in excess of the quantity allowed by paragraph (l) or by an agreement under paragraph (a) do not enter the United States for consumption. This authority is implicit in the Act because Congress could not have intended for these agreements to be unenforceable.

Sec. 353.19(a)

Comment: Two parties object to this paragraph because it provides that “without right of comment,” the Department may determine that the signatory exporters have violated an agreement and take enforcement action. They believe that fairness and due process require right of comment before the contractual agreement is abrogated. One party argues that it is highly unlikely that a delay sufficient to allow an affected party an opportunity to explain its actions will have any measurable effect on the U.S. economy or the health of any industry.

Department's Position: As stated in the preamble to the proposed rule, “The Secretary would use the "fast track" approach in paragraph (a) when the Secretary decides that the record shows clear evidence of violation by any signatory exporter and that notice and comment are unnecessary.” 51 FR 29050 [August 13, 1986]. There is no unfairness or violation of due process when the Department’s determination is based on facts in the record of the case that establish that the exporters have failed to comply with the terms of the agreement by their own act or omission. This regulation is consistent with the statute and legislative history.

We note that, to be consistent with changes made in the countervailing duty regulations, we are revising paragraph (a)(4) by deleting the phrase “if appropriate” and inserting in its place “if the Secretary determines that the violation was intentional.” This change clarifies that the Department will refer the violation to the U.S. Customs Service when the Department considers that the agreement was intentionally violated.

Sec. 353.19(b)

Note: We have modified paragraph (b)(1) to clarify that this paragraph applies when the Secretary does not have sufficient information to take action under paragraph (a) of this section.

To be consistent with changes made to the countervailing duty regulations, we have added the phrase “and after consideration of comments received,” before the phrase “the Secretary will” in paragraph (b)(2). This will
avoid confusion and better reflect the intent of this paragraph (its title is "Determination After Notice and Comment").

In addition, paragraph (b)(2)(ii) was intended to conform to section 734(i)(1)(A)(ii) of the Act, which provides for suspension of liquidation of all unliquidated entries of the merchandise made on or after the date the agreement no longer meets statutory requirements, even if that merchandise was entered before the date of the Department's notice under paragraph (b)(1). We have amended paragraph (b)(2)(ii) to reflect that intention more clearly. We also have corrected the references to section 734(d)(1) of the Act in paragraphs (b)(2)(ii)(B) and (b)(2)(ii)(C); the correct citation is to section 734(d) of the Act.

Sec. 353.19(d)

Comment: Two parties believe the proposed definition of "violation" is inconsistent with section 734(i) and the legislative history of the Act to the extent that it defines a violation in terms of "significant" noncompliance. These parties believe that any violation of an agreement must be treated as a violation, not just those which the Department considers significant. In contrast, the parties express agreement with the proposed definition of "violation," because it clarifies that insignificant acts or omissions will not be considered violations.

Department's Position: The purpose of the definition of "violation" is to act to permit the Department to ignore noncompliance or equate "significant noncompliance" with "intentional violations," but to distinguish noncompliance that warrants termination of the agreement from noncompliance that is de minimis. This is similar to the distinction in contract law between "material" and "immaterial" breach. The word "significant" is too vague to accomplish this purpose. Therefore, we are modifying the definition to state that "violation means noncompliance with the terms of a suspension agreement caused by an act or omission of a signatory exporter, except, at the discretion of the Secretary, an act or omission which is inadvertent or inconsequential."

Even if the Department finds that the act or omission was clearly inadvertent or inconsequential, the Act does not declare the agreement violated, the Department would consider whether it is appropriate to seek revision of the agreement under paragraph (b)(2)(ii)(B) or (b)(2)(ii)(C) in order to eliminate the possibility of repetition of such acts or omissions.

Sec. 353.20(a)

Comment: One party states that the regulations should provide that the Department will make a final determination not later than 75 days after "the date of" its preliminary determination (as under the current regulation) rather than "the date of publication of" its preliminary determination (as proposed). The party notes that the preliminary determination may be signed three to five days before it is published in the Federal Register, which means that under the proposed rule the Department may extend the statutory time limit by the same number of days.

Another party suggests that paragraph (a)(2)(ii) should be modified to require inclusion of administrative and judicial precedents on which the legal conclusions are based. In addition, this party urges that paragraph (a) be modified to clarify that subsequent issues may not expand the scope of the investigation established in the notice of initiation.

One party suggests that the regulations require the Department to hold disclosure conferences with the parties, if requested, after the final determination, but before the antidumping duty order is published. At such conferences, the Department should provide a full explanation of the final determination, including disclosure of all calculations and computer materials used in that determination. This party also suggests that the regulations provide for the correction of any errors in the calculation of dumping margins no later than 20 days after publication of an order. This would avoid unnecessary litigation as a result of the requirement that parties file a summons with the U.S. Court of International Trade 30 days after publication of an order to preserve their right to seek court orders mandating corrections.

Department's Position: We have revised paragraph (a) to state that "in not later than 75 days after the date of the Secretary's preliminary determination, the Secretary will make a final determination."

Regarding paragraph (a)(2)(ii), it is the Department's practice to explain in detail the legal conclusions for its final determinations, including, as appropriate, a statement of relevant legal precedent. This practice fully complies with section 755(d) of the Act. Regarding the comment on expansion of the scope of the investigation, see the Department's response to comments on § 353.13.

We have added a new paragraph (e) that would require the Department to hold a disclosure conference, if requested, after a final determination. This paragraph reflects the Department's current practice. We note that the purpose of any disclosure conference is only to provide an explanation of the methodology used in a determination. See the Department's response to comments on § 353.15(g). Section 1333 of the 1988 Act requires correction of ministerial errors following a final determination. See the Department's interim procedures at 53 FR 41617 (October 24, 1988); 53 FR 5813 (February 26, 1988).

Sec. 353.20(b)

Note: In order to conform with the statute, we have revised paragraph (b) to provide that the Secretary will postpone the final determination to not later than 135 days after the date of publication of the preliminary determination.

In addition, we have added to paragraph (b) the requirement that the Secretary notify all parties to the proceeding and publish notice of any postponement. This is consistent with current practice.

Sec. 353.20(c)

Comment: All parties commenting on this paragraph argue that it is unfair to penalize foreign producers who have unsuccessfully sought exclusion. Two parties note that it is usually unclear even to an informed observer whether a particular sale is at less than fair value and thus it is manifestly unfair to penalize foreign producers for believing that their practices for determining fair value are the same as the Department's practices. These parties also argue that this section is unnecessary because the regulations already require publication of the dumping margins for each respondent, thus there is no reason to make special mention of companies that unsuccessfully sought exclusion because there is no difference in the legal result. They suggest eliminating this proposed section.

Department's Position: There is no "penalty" associated with stating a company's dumping margin. The paragraph is not needed, however, because the requirement to publish the margins for all producers and resellers found to have been selling at less than fair value is already provided by § 353.20(a)(2)(ii). We, therefore, have deleted the paragraph and renumbered the succeeding paragraphs accordingly.

Sec. 353.21

Comment: One party contends that the scope of an antidumping order must be limited to the product coverage set forth in the notice of initiation.

Department's Position: See the Department's response to comments on § 353.13.
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Sec. 353.21(c)

Comment: One party argues that the clause "no weighted-average dumping margin" should be replaced by a de minimis standard, which would make the regulation consistent with the Department's current practice.

This party also contends that, in order to be excluded from an order, a firm must have either (a) applied for and qualified for an exclusion under § 353.14, or (b) been a producer or seller investigated by the Secretary and found to have no weighted-average dumping margin during the investigative period.

This party notes that the use of the term "end" in the proposed regulation can be read to require that both conditions be present.

Department's Position: The phrase "no weighted-average dumping margin" means any zero margin. A de minimis margin is considered a zero margin. Any party for which there was no weighted-average dumping margin (including de minimis) would be excluded from the Department's order. The definition of de minimis was addressed in the rulemaking which culminated in publication of a final rule on de minimis dumping margins and countervailable surcharges (60 FR 3680, August 17, 1987). That rule is included in these regulations as § 353.6.

Comment: As proposed, only addressed exclusions based on requests submitted under § 353.14. We have modified this paragraph to clarify that any producer or reseller that did not request exclusion under § 353.14 and for which the Department nonetheless calculated a zero margin will be excluded from the order. See Department's response to comments on § 353.14.

Sec. 353.22(a)

Comment: Three parties argue that the proposed regulation will result in interested parties having to request a new administrative review before the final determination has been made in an ongoing review. One party argues that, as proposed, the regulation will reimpose on the Department the burden of conducting reviews that no party desires. This party suggests that this section be revised to provide that the Department will make a final determination within 12 months of the anniversary date of publication of the order or suspension agreement, instead of from the month in which the review was requested. One party suggests that this section be revised to allow requests for a subsequent review to take place only after the previous review has been completed. Another party suggests either shortening the time period for the administrative review or extending the deadline for the request of subsequent reviews.

Two parties recommend that the regulations require the Department to continue its present practice of publishing each month in the Federal Register a list of orders that have anniversaries occurring during the month. One party urges that the notices should include the rates of duty that will be automatically assessed if no request for review is received, and that the notices be mailed to all interested parties to the preceding investigation or review.

One party urges the Department to include a provision that would allow foreign producers that are new entrants into the U.S. market after the investigation is completed to have the opportunity to request a review at any time more than six months after the deadline for exclusion requests in the last segment of the proceeding. If it is determined that a new entrant made no sales at less than foreign market value, the order should be revoked ab initio with regard to the products of that party.

In addition, if the Department does not act on a timely request for exclusion during an investigation, any firm that made such a request should be entitled to an expedited review, and, if appropriate, revocation, or an individual estimated duty rate.

Department's Position: Regarding the timetable for requesting and conducting reviews, we find that proposed § 353.22 does not comply with the statutory direction that a review be conducted "at least once during each 12-month period beginning on the anniversary of the date of publication of the order * * *." We have, therefore, amended paragraphs (c)(7) to require that the review be completed not later than 365 days after the anniversary month (replacing "Secretary's initiation of"). Consequently, reviews will be completed by the end of the anniversary month. In order to ensure that the Department can meet the new deadlines for completing reviews during the period of transition to the new final rule, we have provided that the effective date of paragraphs 353.22(a) and (c) will be the first day of the first month beginning 60 days after publication of these rules.

Prior to that date, the interim final rule published on August 13, 1985 (50 FR 32556), will apply. See also the Department's response to comments on paragraph (c)(7).

We recognize the importance to the party submitting the request for review of knowing the final results of the immediately preceding review, if any. Therefore, we are modifying paragraph (a) to permit the party that submits a request to withdraw the request under certain conditions. If a relevant review has not been completed before the end of the anniversary month during which the new request is submitted, the party that submitted the new request may withdraw it not later than 90 days after the date of publication of notice of initiation of the requested review. The Secretary may extend the time limit if it is reasonable to do so. Notice of the termination or partial termination of an administrative review, based on withdrawal of the request, will be published in the Federal Register.

(Notice of partial termination normally will be published together with the preliminary results of administrative review for other firms being reviewed, if any).

As a matter of practice, the Department does publish in the Federal Register at the beginning of each month a courtesy listing of reviews that can be requested during the month. It is the responsibility, however, of interested parties to follow developments in a proceeding even in the absence of the published notice at the beginning of the anniversary month. It is unnecessary for the Department to list various estimated antidumping duty rates in the published notice, especially because our experience has been that many parties discuss their options with the Department prior to filing a request for review.

We find unacceptable the suggestion that new entrants into the U.S. market after publication of an antidumping duty order be provided an opportunity for expedited review and if, our first examination of those exporters indicates that there were no sales at less than foreign market value, for the order to be revoked with regard to their products. Antidumping duty orders apply to all imports from a covered country, except those from firms specifically excluded from the antidumping duty order. Exclusions are based on the examination of a period prior to initiation of the investigation, when the respondent firm presumably acted without regard to the potential imposition of duties under the U.S. antidumping duty law. Under these circumstances, the Department can predict with some reliability the firm's future actions. If we were to follow the proposal in the comment, it would be simple for a firm, knowing of the antidumping duty order, to enter the market, ship for one year or less without selling at less than foreign market value, be "excluded," and then begin to sell at
less than foreign market value. We believe the revocation procedures of § 353.25 provide the additional measure of security necessary before revocation.

Sec. 353.22(c)

Comment: Regarding the procedures set forth in paragraph (c), one party contends that the Department should be required to provide individual notice of initiation of a review to all parties to the original investigation or most recent review. If the Department initiates a review, both a petitioning individual or reseller under paragraph (a) by publication of a notice under paragraph (c)(1), the Department should give other producers and resellers 30 days from the date of publication of the notice to inform the Department that they also want a review. Another party argues that it is unconstitutional to send questionnaires to and verify only a sample of respondents. They argue that paragraph (c)(2) should be revised to provide that questionnaires will be sent to and verified for every respondent that timely requests either.

One party believes the 365-day time limit in paragraph (c)(7) for issuing the final results of administrative review should be shortened to six months, with the possibility of extension to nine months for reviews under paragraph (a)(1) that involve a large number of respondents. This party states that the Department should expedite reviews in order to reduce uncertainties caused by long periods of suspension of liquidation.

Finally, one party argues that the proposed regulations provide no formal mechanism for participation by interested parties. It suggests that the regulation be amended to allow interested parties to comment on the questionnaires before they are distributed, on the verification procedures, and before any hearing is held, on the Department’s verification report.

Department’s Position: We do not agree that all parties to the segment of a proceeding immediately preceding the initiated review must receive actual notice of the initiation under § 353.22(c)(1). As a matter of practice, however, we have attempted, and will continue to attempt, to provide actual notice to the parties. As to the suggestion that, following initiation of an individual producer or reseller review under paragraph (a), the Department provide a second period for requesting reviews, the party submitting the comment provided no reason, and we can see no reason, to do so. All interested parties have an opportunity to request a review during the anniversary month. A decision to request a review is completely independent of any other party’s request for review of an individual producer or reseller.

With regard to the argument concerning the unconstitutionality of the provision that allows the Department to send questionnaires to and verify only a sample of respondents, this authority is established in § 777A of the Act. The Conference Report of the 1984 Act specifically described the provision as expanding “the instances in which the administering authority may use sampling and averaging techniques * * * in carrying out annual reviews of outstanding AD or CUD [sic] orders under section 751 * * *.” H.R. Conf. Rep. No. 1156, 98th Cong., 2d Sess. 186 (1984).

Regarding the suggestion that the Department shorten the time limit in paragraph (c)(7) to six or nine months, the Department requires no less than 365 days in many cases to complete an administrative review. Any shorter time limit is impracticable.

Particulars on interested parties is provided by Subpart C. As a matter of practice, the Department makes every effort to consult with parties to the proceeding.

We note that, to be consistent with changes made in the countervailing duty regulations, we have extended the deadline in paragraph (c) for publication of notices of initiation of administrative reviews from 10 days to 15 days after the anniversary month. This change has been made to reflect the amount of time that is actually needed to publish an initiation notice. This revision does not change the Department’s deadline for completing reviews.

We also note that in paragraph (c) of this section, we have clarified that the Department will hold a disclosure conference, if requested, promptly after issuing the final results in an administrative review. In addition, we have clarified that the purpose of disclosure, whether after the preliminary results or after the final results, is only to provide an explanation of the calculation methodology used in reaching the results.

Sec. 353.22(e)

Comment: All parties commenting on this provision urge that this paragraph be amended to require assessment at the most recently determined rate. These parties argue that in situations in which administrative reviews have been completed after the final determination, the cash deposit rate for the entries may not reflect the most recently determined antidumping duty rate. In addition, they note that when the duty rate established in a final determination is lower than the preliminary rate, automatic assessment should be made on the basis of the final rate. One party recommends an amendment to this section, proposing that when the Customs Service assesses antidumping duties in that situation, the section should specify an exception “with respect to merchandise entered between the preliminary affirmative determination by the Secretary and the final affirmative determination by the ITC of material injury, in which case such entries shall be assessed antidumping duties at the lower of the preliminary or the final rate as is appropriate.”

Two parties argue that this proposed regulation is contrary to the GATT. According to these parties, the Antidumping Code unambiguously provides that the rate set in the final antidumping duty order for all purposes replaces rates determined at an earlier stage of an antidumping investigation. Thus, the collection of duties at the rate established in a preliminary determination is contrary to the Antidumping Code, especially in those cases where the final rate is lower than the preliminary one.

Department’s Position: Because the cash deposit (or bond) rate is the basis for each interested party’s decision whether to exercise its right to request a review, it would make no sense to change the rate after the time for request has expired. Interested parties that believe the assessment level should be higher or lower than the estimated antidumping duties deposited at the time of entry can request an administrative review. In addition, the use of the cash deposit rate required at the time of entry is in accordance with the purpose of the entire review-upon-request mechanism, i.e., to reduce unnecessary administrative burdens. If these recommendations were adopted, the Customs Service would be required to make adjustments for under- or overcollections as well as collecting, or paying, interest. In any event, the failure of an interested party to file a timely request for review constitutes a determination under section 751 of the dumping margin for the entries made during the review period.

We disagree with the argument that paragraph (e) is inconsistent with the Antidumping Code. A final determination in an investigation only establishes an estimated weighted-average dumping margin. The amount of the dumping margin does not become “fixed” within the meaning of Article 11 of the Antidumping Code, and thus...
antidumping duties are not assessed, until the Department has completed an administrative review. At that time, duties would be assessed at the rate established in the final results of administrative review. If an administrative review results in the "fixing" of a lower rate than had been deposited, the difference would be refunded in accordance both with U.S. law and the GATT Antidumping Code. If no review of particular entries is requested, however, the cash deposit rate becomes the "fixed" rate, and the entries will be liquidated at that rate. As noted above, interested parties that believe the assessment level should be higher or lower than the estimated duties deposited at the time of entry can request an administrative review. See the Department's response to comments on § 353.23.

We emphasize that when no interested party requests an administrative review, the Department will instruct Customs to liquidate the entries for that review period at the rate deposited at the time of entry. This automatic assessment will occur regardless of whether litigation resulting from the prior administrative review or the LTFV investigation is pending. See NTN Bearing Corp. of America v. United States, Slip Op. 86-161, 12 CIT ___ (November 23, 1986) (citing Fundicco Tupy S.A. v. United States, Slip Op. 87-93, 11 CIT ____ (August 3, 1987)).

Sec. 353.22(f)

Note: To be consistent with changes made to the countervailing duty regulations, we have modified paragraph (f)(1)(vii) (proposed paragraph (f)(1)(vii)) by deleting the phrase "if appropriate." This change would make it necessary for the Department to provide a further explanation of its determination. If there is additional information about the determination that can be disclosed, to any party to the proceeding that requests disclosure. As modified, this paragraph conforms to paragraph (c)(5) of this section and to § 353.15(g).

We have added a new paragraph (f)(1)(viii), which provides that the Department will conduct verification if appropriate. In addition, we have added a new paragraph (f)(1)(a)/(ii), which clarifies that the Department will hold a disclosure conference if requested promptly after issuing the final results in a changed circumstances administrative review. We also have added a new paragraph (f)(1)(c), which provides that "changed circumstances reviews may be requested at any time, including periods other than anniversary months." This change clarifies that a party's right to request a changed circumstances review or to bring relevant information to the Department's attention is not limited to anniversary months.

Sec. 353.22(g)

Note: We have clarified in paragraph (g)(4)(iv) of this section that any disclosure conference under this section will be limited to providing an explanation of the calculation methodology used for the Secretary's analysis. In addition, we have added a new paragraph (g)(4)(vii) to clarify that the Department will hold a disclosure conference if requested, promptly after issuing the final results in an expedited review.

Sec. 353.23

Comment: One party claims that this section is inconsistent with section 737(a) of the Act and the Department's practice. Section 737(a) states that the "cap" on assessment of duties on entries made during the period between the Department's preliminary determination under section 733(d)(2) and the Commission's final determination under section 735(b) is the cash deposit rate set by the Department in its preliminary determination under section 733(d)(2) of the Act. Section 737(a) does not authorize the Department to establish a new cap at the time it issues its final determination under section 735(a) of the Act. As section 737(a) does not authorize the Department to establish a new cap at the time it issues its final determination under section 735(a) of the Act, the proposed change would make it necessary for the Department to provide a further explanation of its determination. If there is additional information about the determination that can be disclosed, to any party to the proceeding that requests disclosure. As modified, this paragraph conforms to paragraph (c)(5) of this section and to § 353.15(g).

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Sec. 353.23

Comment: Four parties object to the three-year time period for revocation or termination based on the absence of sales at less than foreign market value. These parties suggest keeping the current two-year period because they believe the Department's current practice has worked well. Two parties note that the proposed change will unnecessarily increase the burden on the Department for conducting section 751 reviews. One party suggests that if the proposed three-year time period is adopted, the Department should permit the request for a review to be submitted on the second anniversary of the order because the revocation will not take effect for another year. Another party urges the Department not to apply retroactively the new time-period to cases in which revocation proceedings have been initiated under then-existing regulations. Another party suggests that the regulation clarify that, for purposes of revocation, a finding of de minimis dumping margins is equivalent to a finding of no sales at less than foreign market value.

Three parties urge the Department to modify the proposed regulation to provide for revocations based on the absence of shipments. One party argues that the absence of such a provision will result in new shippers being indefinitely "locked-out" of the U.S. market.

One party requests the Department to delete the requirement in paragraphs (a)(1)(ii) and (a)(2)(ii) that the Department determine that a foreign producer is "not likely" to sell merchandise at less than foreign market value. The party argues that the Department has included no guidelines as to how this provision would be implemented and as to how the Department would determine whether future sales below foreign market value were "likely" or not. Regarding the reinstatement provision in paragraph (a)(2)(ii), this party argues that a revocation based on the absence of LTFV sales should be final. The party adds, however, that if any "provisional" period is necessary, it should be limited to a one-year period following the period of no margins.

Department's Position: The adoption of a three-year period for revocation or termination based on the absence of dumping does not substantially modify the period of time that must be
reinstatement agreement and as to which an order has been revoked. By comparison, without this provision, petitioners would face the unnecessary time and expense associated with a new proceeding if dumping activity resumes. We note that we have deleted the reference to "fair value" in paragraph (a)(2)(iii) because the correct term after an order is in place is "foreign market value."

Sec. 353.25(d)(4)

Comment: Regarding the "sunset" provision in paragraph (d)(4), two parties argue that the language unnecessarily limits application of the provision to cases in which "no interested party requested an administrative review" during the preceding four years. They note that this should not preclude a review in which producers or resellers that have eliminated or lowered a dumping margin have requested a review. The fact that an importer, producer, or reseller may have requested an administrative review during the four-year period in order to lower deposit rates should not hold against them. The issue is whether a domestic interested party is interested enough to pursue the review. Therefore, these parties suggest precluding a revocation only in those cases in which a review was requested on behalf of the domestic industry.

In addition, two parties oppose the proposal that the mere objection by any interested party should be sufficient to prevent revocation of an order. One party suggests that a revocation be suspended only if an interested party shows that revocation may lead to injury or threat of injury. The other party suggests that the objecting party be required to show good cause why the revocation should not be issued.

Two parties note that the time limits provided are unnecessarily long. One party suggests that the procedure described in this subsection be initiated 90 days before the third anniversary month, and concluded by publication of the revocation if no objection is received by the last day of that month.

Finally, one party argues that the provision requiring the Department to provide written notice to each party on the service list and to "any other person which the Secretary has reason to believe produces or sells the like product in the United States" is absurd and should be eliminated. It contends that the Department is inviting an administrative nightmare, and that publication in the Federal Register is sufficient. It notes that although the Department professes to want to reduce its litigation caseload, it is inviting companies which may never have been parties to sue the Department over whether it should have known they would be interested in the subject.

Department's Position: Congress has recognized that the Department may revoke an order or terminate a suspended investigation in the absence of domestic party interest in continuing the order or suspended investigation. See H.R. Rep. No. 1166, 98th Cong., 2d Sess. 181 (1984). The so-called "sunset" provision is merely a means for ascertaining if interest in continuation of the order exists. Thus, we limit application of this provision to proceedings in which no party has requested a review during the preceding four years. Importers, producers, or resellers that believe no domestic interested party is interested in continuation of the order may request revocation under paragraph (d)(1) of this section.

The "sunset" provision of paragraph (d)(4) is not intended to substitute for other provisions of the Act or regulations that govern particular situations warranting revocation. For example, a changed circumstances request to the Commission under section 753(b) of the Act is the proper vehicle for review of whether injury continues to exist. The changed circumstances provision in paragraph (d)(1) (and other provisions) is a more appropriate basis for revocation of an order in contested cases. If parties believe that five years is too long to wait for a revocation in accordance with the provisions of paragraph (d)(4), they may request revocation under the other provisions of §353.25.

As stated earlier, because the "sunset" provision is a means for ascertaining whether there is interest in continuation of an order, it is appropriate that the Department take reasonable steps, including giving actual notice of the intent to revoke or terminate, to determine whether such interest exists. We believe the courts would take account of the Department's limited knowledge of the existence of U.S. producers or sellers other than those found on the service list which may be interested in a proposed revocation or termination.

We note that because a notice of initiation and consideration of revocation or termination provided for in paragraph (d)(3)(ii) need not be based on a request, we have added a new paragraph (d)(3)(ii) requiring actual notice if the consideration is not based on a request.

Examined under the current regulations. Even though the current regulations require a two-year period without dumping, the practice adopted in antidumping proceedings requires the examination of, at a minimum, about two years and nine months. That is because the Department examines the period between the end of the two-year period and the date of the tentative revocation or termination (the "gap period"). The adoption in §353.25(c)(3) of the day after the end of the three-year period as the effective revocation date eliminates the need for an examination of the gap period.

Regarding the suggestion that requests for revocation be entertained at the second anniversary of the order, this is simply impossible. The rule requires no dumped sales for a three-year period. A request, therefore, cannot be considered until the three-year period is over. The Department examines, which cannot occur until after the end of the second anniversary month.

In cases in which the Department has initiated tentative revocations prior to the effective date of these regulations, it would be inappropriate to continue the revocation procedure under the existing regulations. In all other cases, the new regulations will apply.

With regard to the suggestion that the regulation clarify the effect of a finding de minimis dumping margins, a de minimis margin obviously is equivalent to a zero margin and thus no clarification is necessary. For an explanation of the consequences of a finding de minimis dumping margins, see the Department's response to comments on §353.21(c).

The departure from the Department's past practice, this rule does not provide for revocations based on a period of no shipments. It has been the Department's experience that the absence of shipments is no indication of the absence of price discrimination, which is the basis for revocation under this paragraph. In determining, however, whether an order should be revoked based on changed circumstances under paragraph (d), the Department may consider among other things periods of no shipments. The statute gives the Secretary broad discretion in deciding when to revoke an order. The Secretary has determined that a pre-condition to revocation under this paragraph is that the Secretary be satisfied that there is no likelihood of future sales at less than foreign market value. In regard to the reinstatement provision in paragraph (a)(2)(iii), the commenter has not indicated that any burden is imposed on a respondent that has entered into a
Sec. 353.25(e)

Comment: One party suggests that the proposed regulation be modified to clarify application of the phrase “negative final result” to suspension agreements due to confusion that may be caused by the related Commission regulation. Because section 751(b) of the Act and the Commission regulation provides that it shall determine whether an agreement continues to eliminate completely the injurious effect of imports, a “negative final result” would require an order to be restored. The party, therefore, suggests that the Department’s regulation be modified to prevent any future confusion.

Department’s Position: We agree that clarification is needed as to a finding by the Commission concerning a suspension agreement, which would result in the initiation of a suspended investigation, and have modified the final rule accordingly.

Sec. 353.31(a)

Comment: Five parties believe that the deadlines for submission of factual information are unreasonably short and inflexible. Most of these parties object to the proposed deadlines because they would preclude submission of factual information during verification, even though such information could be verified, or after verification, even though such information may rebut, clarify, or correct earlier submissions.

One party suggests that for both investigations and administrative reviews, the Department establish a deadline of 10 days subsequent to verification or 30 days prior to a final determination or final results of review for submission of factual information.

One party favors retention of the more discretionary guidelines in § 353.46 of the regulations, which permit the Department to issue specific instructions regarding specific submissions and extend the deadline for submission when warranted. Two parties urge retention of the flexibility afforded by the current regulation to extend established deadlines, whenever deadlines are included in the new regulations. One party urges the Department to retain the discretion to accept late submissions “when justice requires,” and suggests revision of the proposed regulation to permit consideration of factual information submitted after the deadline in such instances. One party suggests that the regulations be revised to permit the Department to accept at any time information that corrects or clarifies earlier submissions, as under current practice.

One party focuses specifically on the effect of the deadlines on the ability of petitioners to participate fully in proceedings. It emphasizes that the deadlines in paragraph (a) are appropriate for respondents but would make it impossible for petitioners to organize and to focus their investigative efforts on particular issues raised in respondents’ submissions, because respondents’ submissions are often made just prior to the deadline established in this paragraph. This party suggests that the time limits in paragraph (a) should apply only to respondents, and that the Department permit petitioners to submit factual information not less than 30 days after all proprietary information submitted by respondents and the non-public version of the Department’s verification report have been released to petitioners under administrative protective order. Alternatively, this party believes the Department should establish specific deadlines in each case, as under current practice.

Department’s Position: The purpose of this section is to provide all interested parties a reasonable opportunity to submit factual information for the Department to consider in the final determination or final results of review. The “flexible” approach to deadlines for submission of factual information, which means that the Department establishes time limits separately for each investigation or review, has led to seemingly endless confusion and time-consuming debate about what is a reasonable time limit.

The comments have not persuaded us that the time limits for submission of factual information by respondents (interested parties as defined in paragraph (k)(1) or (k)(2) of § 353.2) are unfair or unreasonable. If the Department deems additional factual information to be critical to the investigation or review, the Department will request the information under § 353.31(b)(1). Such information might include information that to some extent clarifies or corrects earlier timely submissions and that could be, for example, requested orally at verification.

We do agree, however, that the proposed rule does not provide domestic interested parties (interested parties as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2) an adequate opportunity to rebut, clarify, or correct earlier submissions of factual information by respondents. Accordingly, we have modified paragraph (a) of this section to provide a period of 10 days from the date such factual information is available to domestic interested parties for the submission of factual information that clarifies, rebuts, or corrects earlier submissions by respondents. The information is “available” to a domestic interested party when it is either served on it or, if the information is business proprietary information that is not served directly on the domestic interested party, released to it under APO.

We note that the deadlines for submission of questionnaire responses, including deficiency responses, and submissions of new allegations by petitioners are controlled by paragraphs (b) and (c).

We also note that we have clarified that factual information submitted after the applicable deadline will be returned to the submitter with written notice stating the reason for return of the information.

Sec. 353.31(b)

Comment: Three parties believe that the proposed limitation in paragraph (b)(2) on consideration or retention in the record of unsolicited questionnaire responses should be deleted. One party argues that the antidumping law provides no authority for the Department to reject voluntary submissions. Another party comments that the Department’s failure to include submissions, solicited or not, in the record is contrary to the Department’s administrative responsibilities and could deprive a party of its right to judicial review.

Three parties argue that this paragraph unnecessarily restricts the officials who have the authority to approve requests for extension of time. One party suggests that the appropriate officials should be authorized to delegate authority to other Department employees to approve requests for extensions. Another party recommends that this provision be amended to provide a “safety valve” for unforeseen contingencies when a written request has become impossible or the appropriate officials are unavailable.

One party argues that the proposal in paragraph (b)(4) to shorten the time for submission of questionnaire responses is unjustified. It notes that it is virtually impossible to gather the required information and translate it in the time period allowed. In addition, it contends that the Department often does not review responses until several weeks after they are submitted, and that it therefore is inappropriate to require
respondents to meet unrealistic deadlines. If the Department is going to insist on perfect responses by not allowing opportunities for revisions of unintentional errors, it must allow sufficient time for the preparation of such responses.

Department's Position: As explained in the preamble to the proposed rule, the short statutory time limits and the complexity of antidumping duty proceedings, including verification requirements, usually make it impossible for the Department to consider unsolicited questionnaire responses. See 51 FR 29052 (August 13, 1986). The Department normally includes in its investigation foreign producers and resellers accounting for most of the exports of the merchandise. In addition, a party may request exclusion from an investigation under § 353.14 or revocation under § 353.25(b), as appropriate. In unusual circumstances, paragraph (b)(2) permits the Department to consider unsolicited questionnaire responses. We note that we have added a sentence to paragraph (b)(2) to clarify that untimely or unsolicited questionnaire responses rejected by the Department will be returned to the submitter with written notice specifying the reasons why the Department rejected the information.

Requests for extension must be approved in writing, as provided in paragraph (b)(3), in order to avoid confusion and ensure fair and equitable treatment for all parties. If the designated official is not available to act on a request, the official will have designated someone else to act in the official's absence. The first sentence of paragraph (b)(3) emphasizes the fact that an extension of time for submitting a questionnaire response is difficult to obtain. The Department will judge each request on its own merits and grant requests when the requester can establish a legitimate need for additional time.

The Department's Position: The Department is shortening the time limit for submission of questionnaire responses. Previously, the Department generally required questionnaire responses in administrative reviews to be submitted 30 days after receipt of the questionnaire, with an easily granted 15-day extension. The new regulatory deadline in this paragraph provides for a net gain of at least 15 days.

Sec. 353.31(c)

Comment: One party comments that the deadline in paragraph (c)(2) for submission of an allegation that a petitioner lacks standing is entirely too late in an investigation. They argue that the proposed deadline would make it difficult for the petitioner to offer factual or legal arguments by way of rebuttal in time for the Department to give them due consideration before making a preliminary determination. Alternatively, the proposed filing deadline could mean that no decision would be made until after the preliminary determination if the Department's preliminary determination were affirmative, however, dismissal of the investigation would violate section 732(a) of the Act. This party recommends revising the proposed regulation by limiting such an allegation to "not later than 45 days after the filing of the petition." Petitioners should then have 10 days after receipt of the allegation to respond.

Another party argues that there should be no time limits placed on allegations that a petitioner lacks standing. They contend that because standing is a prerequisite for imposition of antidumping duties, as a matter of law, a party should be able to raise it at any time during the course of a proceeding.

Department's Position: The time limit on allegations of petitioner's lack of standing is intended to ensure that the allegation is submitted sufficiently early in the proceeding to permit adequate investigation of the allegation. As stated in the preamble to the proposed rule, "[s]tanding is important; however, it is also complex and the Department needs time to gather and evaluate the facts." 51 FR 29052 (August 13, 1986). The Department believes the time limit is reasonable based on its experience in dealing with such allegations. See, e.g., Certain Atlantic Groundfish from Canada, 51 FR 10041, 10043 (1986).

We note that we have revised paragraph (c)(1)(ii) to provide an exception to the deadline for filing allegations of sales below the cost of production when the Department determines that a "relevant response" is untimely or incomplete. The added language mirrors the language already included in paragraph (c)(1)(i).

Submitters should note that the adequacy of new allegations will be judged by the same standard (taking into account the information reasonably available at the time) as would have applied if the allegations had been contained in the petition.

Sec. 353.31(e)

Comment: One party states that the Department should not reject a submission that substantially conforms to the requirements stated in paragraphs (e)(1) and (2), and that the regulation should provide an automatic right for a party to resubmit a document in acceptable form when the initial submission was unsatisfactory solely because it failed to comply with the requirements set forth in these paragraphs. Regarding paragraph (e)(3), this party would add a statement that, absent clear evidence to the contrary, the Department will accept a submitter's representation that it would be unable to submit a computer tape without unreasonable additional burden in time and expense.

Department's Position: Although paragraph (e)(3) gives the Department the authority in specific situations to alter the requirements in paragraph (e), the Department believes it is important that submissions conform to the stated requirements. The Department must be able to process documents quickly so that deadlines can be met. Proprietary information must be identifiable quickly and, if subject to administrative protective order, should be so marked. From the standpoint of an individual submitter of information, these filing requirements and deadlines may seem trivial. From the standpoint of the Department, however, they are very important to the efficient and timely administration of the program. If each of the hundreds of submitters of information were free to depart from the filing requirements, the cumulative burden on the Department would be enormous, and would defeat the very purpose for having filing requirements and deadlines. Therefore, the Department cannot accept "substantial compliance" as a norm. By spelling out in detail each filing requirement, the Department has made it easy for interested parties to understand how to file documents timely and in the proper form. The Department does not anticipate a need to create exceptions to the straightforward filing requirements.

Regarding the exception to the filing requirement in paragraph (e)(3), the Department will consider the "burden in time and expense" without necessarily requiring that both be demonstrated in each case. In evaluating such claims, the Department will draw on its knowledge of the submitter and on its own expertise in computer operations. Although the Department is likely to accept the submitter's description of the additional burden it would incur, the Department will decide whether such burden is unreasonable. The Department will require computer tapes to be submitted in an investigation or administrative review only if the Department believes that computer tapes are necessary and appropriate in...
the particular segment of the proceeding in question.

We note that we have modified paragraph (e)(3) to clarify that the Secretary may require submissions on computer tape as long as that requirement is not an "unreasonable additional burden."

We also note that, to be consistent with changes made to the countervailing duty regulations, and to improve the speed and efficiency of document handling, the Department is revising paragraph (e): (1) to increase from five to seven the number of copies of a document required in an administrative review; (2) to specify that documents shall be single-sided; (3) to require a statement that the document may or may not be released under administrative protective order; and (4) to require that each computer tape be accompanied by a printout of the tape.

Sec. 353.31(f)-(i)

Comment: In order to avoid unnecessary expense, one party would have the Department require the submitter to provide an English translation for any submitted document, or designated portion thereof, within five days of a request from the Department. Another party suggests that we modify the regulation to provide that documents should be accompanied by English translations and failure to provide such translation may result in rejection of the document. This approach would eliminate the burden on the Department to waive in writing the translation requirement.

Department's Position: We believe paragraph (f) as drafted properly balances the needs of the Department for an English translation of a document against the desire of the submitter to meet deadlines and avoid unnecessary administrative burdens.

We note that we have modified paragraph (g) to make exceptions to the service requirement for petitions, proposed suspension agreements, and factual information submitted under § 353.32(a) that is not required to be served on an interested party. See the Department's response to comments on § 353.18(b)(1).

We note that we have added as paragraph (i) to the final rule a certification requirement for submissions of factual information. See the Department's response to comments on § 353.12(a). We believe that the certification requirement will help to ensure the completeness and accuracy of factual submissions.

Sec. 353.32(a)

Comment: One party comments that the requirement in paragraph (a)(2) for an explanation why each piece of factual information is entitled to proprietary treatment is unnecessary and would be extremely expensive in light of the fact that antidumping questionnaire responses often are over 100 pages in length. Another party suggests that documents such as contracts and internal financial statements that are submitted in support of questionnaire responses should be excluded from release under an APO, irrespective of whether the submitter has identified such documents.

Department's Position: For information that failed under § 353.4(b), the Department will require only that the submitter specify how the information fits within § 353.4(b).

The standard for deciding whether to release particular information, including the information noted by the commenter, under administrative protective order, is provided in § 353.3(a). See 51 FR 29053 (August 13, 1986).

We note that we have modified paragraph (a)(2) of this section to clarify that submitters must mark "Proprietary Treatment Requested" only on pages that contain proprietary information.

Sec. 353.32(b)

Comment: Six parties suggest modifications that would make the summarization requirements in paragraph (b) less burdensome to the submitter. Four parties argue that when information is required under an APO, a submitter should not be required to "range" figures in a submission or to provide a detailed public summary. Three of these parties add that the statute does not require public summaries of confidential data to include ranges of the numbers submitted. Two parties suggested that the Department delete the reference to ranging within 10 percent of the actual figure because the ranging may not sufficiently mask the proprietary information (especially when the actual figure is small). One party suggests that only individual representative transactions be summarized within the 10 percent range. Another party suggests a range within 20 percent of the actual figure. With regard to voluminous data, one party suggests that the submitter be permitted to summarize a representative sample. Two of the six parties would modify the regulation to require a detailed nonproprietary summary only when domestic interested parties have established a particular need for such a detailed summary; otherwise, a brief public summary should be sufficient. If the Department retains the proposed rule without modifying it, one party urges the Department to allow the submitter a period of 10 days after submission of the proprietary information in which to file the nonproprietary summary.

Department's Position: As amended by the 1984 Act, section 777(b)(1) of the Act requires either a "non-proprietory summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence" or a statement explaining why such a summary is not feasible. As we explained in the preamble to the proposed rule, the "brief" nonproprietary summary permitted by the current rule is not consistent with the Act as amended. 51 FR 29053 (August 13, 1986).

To some extent, what is "sufficient detail" and what is "feasible" depend on the facts of each case, including the identity of the parties, the number of items of information, and whether or not the submitter has computer capability. The general requirement that numeric data be grouped within 10 percent of the actual figure is intended to alert parties to an approach that our experience shows has been adequate in many situations to meet the statutory purpose. The regulation recognizes what the conflicting comments make clear—that ad hoc decisions as to particular data may be necessary. Some of the suggestions are excellent ways to deal with particular submissions, and the Department will take account of these approaches in specific cases.

The fact that the data submitted are voluminous does not by itself excuse the submitter from the burden of providing a public summary that would afford parties not entitled to receive the proprietary data an opportunity for "a reasonable understanding of the substance of the information submitted in confidence." We note that we have clarified that if a portion of a submission is voluminous, the numeric data summarized must be representative of that portion.

To extend the deadline for submission of the nonproprietary summary of information would delay the availability of such information to parties that may rely on having access to it. The Department has found that the requirement can be met without allowing additional time for submission of the nonproprietary summary.

Sec. 353.32(c)

Comment: One party states that, rather than require submitters to
anticipate arguments supporting a request for disclosure, the Department should allow submitters 48 hours to rebut arguments in favor of disclosure after the Department receives such arguments. The Department should provide the last sentence of paragraph (c) accordingly.

Department's Position: It is unnecessary to provide in the regulation an additional opportunity for argument in opposition to release of submitted information under protective order. Our experience has been that the submitter almost always is aware of the arguments at the time the information is submitted. Therefore, the submitter is capable of presenting any arguments against disclosure at that time.

Moreover, this requirement is essential to avoid unnecessary delay in release of such information that in the past has resulted from repetitive submissions supporting and opposing release. Only in the most extraordinary situation would the Department make an exception to this rule and provide the submitter an additional opportunity for comment. As drafted, the last sentence of this paragraph adequately covers such an exception.

Sec. 353.32(d)
Comment: Two parties contend that 48 hours is too short a period in which to require resubmission of information that the Department has determined does not conform to the requirements of this section. Suggested time limits are one week or five business days. Another party suggests that the Department should not immediately return the nonconforming submission, but rather should allow the submitter five days to supply the additional information needed for compliance.

Department's Position: Because the requirements of this section are clearly stated and known to the submitter in advance of submission, the submitter should have no difficulty meeting the short deadline for resubmission. Nonconforming portions of a public summary should be quickly and easily correctable by the local representative of the submitter. We have changed the regulation, however, so that the time period runs from when the submitter receives the Department's explanation for return of the submission. When the submitter picks up the returned information and explanation at the Department, the time of receipt is the time of receipt for the request and the information should be released, it serves on the protective order recipient. Information subject in protective order, however, is unaware of the post-investigation disposition of APO material in many investigations.

Department's Position: The Department makes every effort to expedite its decisions on release of information. Normally the decision is made within 14 days of receipt of the application. However, in proceedings involving, for example, a large volume of different types of information or complex issues relevant to the balancing test described in paragraph (a), the Department may need some additional time. We have modified paragraph (b) to indicate that the normal time period for the Department's decision is not more than 14 days. This is reflected in section 733(b)(1) of the Act. Another party contends that the Department often is unaware of the post-investigation disposition of APO material in many investigations.
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protective order. The first sentence of paragraph (a) now reads in part "the Secretary may disclose, or require to be disclosed * * *"). The Department normally would require direct service when the submitter has agreed in advance, under § 353.32(c), to release submitted information under protective order. If the submitter does not agree to release computer tapes submitted by the submitter, the Department may request that it state which portions of the proprietary information should not be released under administrative protective order and all arguments supporting that conclusion for each portion."

Almost all verification exhibits are exempt from disclosure under APO because they are not necessary to an understanding of either the calculations or the reasons a particular methodology is chosen. In these instances, the server only assist the analyst in preparing the verification report. In rare situations, a document accepted at verification may be needed to calculate foreign market value or U.S. price; in such an instance, the document would be releasable under APO. As with any other proprietary data, the issue of whether the Department will release, or require to be released, under administrative protective order computer tapes submitted by respondents must be determined on a case-by-case basis. Such a determination will be based on whether the need for access to the proprietary data contained on computer tape outweighs any interest in withholding data. See § 353.34(a); see also Yale Materials Handling Corp. v. United States, Slip Op. 87-121, 11 CIT (November 3, 1987); Timken Co. v. United States, Slip Op. 87-45, 11 CIT (April 6, 1987). If the Department concludes that the need for access to the proprietary data on computer tape outweighs any interest in withholding the data, the Department will require the party to release its redacted computer tapes directly to opposing counsel, at the opposing party's expense, under the terms of an APO specifically written to cover each type of computer tape. The Department may therefore, to request access to information not yet submitted in the proceeding, may be submitted in advance of the filing of requests that cover information not yet submitted in the segment of a proceeding that culminates in a judicially reviewable decision * * *. The regulation recognizes that the standard in section 777(c) for particularity of description of requesting information is a reasonable approach. We note, however, that the time limits in the section 777(c) for particularity of description of requesting information are necessary to eliminate the possibility that special circumstances may justify deviation from the standard form. Regarding paragraph (b)(2), one party suggests that we delete the standard form requirement, because it ignores the possibility that special circumstances may justify deviation from the standard form. Regarding paragraph (b)(4), one party suggests that the proposed rule be modified to ensure that "the taint of a person who violates a protective order" does not affect that person's firm, partner, associates, employees, and employer after that person is no longer employed or associated with them, and likewise does not affect the new firm or employer of that person. This party also believes that additional protection is needed to ensure that consultants do not inadvertently disclose confidential information to a competing company. Another party disagrees with the requirement (stated in the preamble to the proposed rule) that the party's attorney (and the law firm) take responsibility for violation of a protective order by consultants assisting the attorney. This party believes that the sanctions listed would apply with the same effect to consultants, and that the person committing the violation should be held responsible for his actions. There should be no distinction between consultants who work with attorneys and those who do not.

Department's Position: Time limits for requesting disclosure of information under administrative protective order are necessary to eliminate the possibility that the Department will receive a request too late to process it in time to ensure timely disclosure of information. The time limits also are intended to eliminate the administrative burden of processing multiple requests from the same person and to encourage the filing of requests that cover information not yet submitted in the segment of the proceeding at issue. See H.R. Rep. No. 725, 98th Cong., 2d Sess. 44-45 (1984). Because the application may be submitted in advance of submission of the information, there is no reason for a party that may want to participate in an investigation or an administrative review to delay submitting the requests. On the other hand, submission of the application for disclosure does not obligate a party to participate actively in the investigation or administrative review. We do agree, however, that the time limits in the proposed rule may be shorter than
Départaient gives special consideration to experts in analyzing the information under protective order to determine if it is an appropriate subject for rulemaking. We have experience with respect to disclosure to in-house counsel, consultants, and other non-attorney representatives. The Department's policy for evaluating competing interests in requests for disclosure to in-house counsel, consultants, and other non-attorney representatives has developed in the context of specific proceedings. Given the fact that we still have relatively little experience with respect to disclosure to such persons, we do not believe that this is an appropriate subject for rulemaking at this time.

The Department releases proprietary information under protective order to consultants and non-attorney representatives when it concludes that there is sufficient evidence of a particular need for the individual's expertise in analyzing the information on behalf of a party to the proceeding. and only when the Department is satisfied that the information will be protected from unauthorized disclosure. Consistent with the legislative history of section 777 of the Act, the Department "generally" releases information under administrative protective order "only to attorneys who are subject to disbarment from practice before the agency in the event of a violation of the order." S. Rep. No. 249, 96th Cong., 1st Sess. 101 (1979).

When the Department releases information under APO to consultants and other non-attorney representatives, these individuals are subject to the same sanctions as are attorneys for any violation of the order. See the Department's final rule entitled "Procedures for Imposing Sanctions for Violation of an Antidumping or Countervailing Duty Protective Order," 53 FR 47916 (November 28, 1988). The standard form requirement reduces significantly the administrative burden of reviewing requests for consistency with the law. It also simplifies the process for the requester. The standard form covers "special situations," such as in-house counsel and non-attorney representatives.

We have modified paragraph (b)(4) to reference the sanctions listed in § 354.3 of the Department's final rule entitled "Procedures for Imposing Sanctions for Violation of an Antidumping or Countervailing Duty Protective Order," 53 FR 47916 (November 28, 1988). The sanctions are necessary and appropriate for ensuring the effectiveness of the Department's protective order. Under the proposed rules, the person who violates a protective order is held responsible, be it an attorney or other professional representative. Holding the employer, partner, and others in the firm or company responsible to the extent of debarring the firm or company from practice before the Department is consistent with the need for strict compliance with the terms of protective orders, although that sanction would be exceedingly rare and would be appropriate only when the firm's actions, practice, or policies have contributed to the violation. Section 354.3 gives the decisionmaker a broad range of sanctions to deal with all possible types and degree of violations.

We note that, to be consistent with changes made to the countervailing duty regulations, we have revised paragraph (b)(3)(ii) to refer to "the segment of the proceeding in which [the information] was submitted," instead of "the segment of the proceeding then in progress," to allow for the possibility that segments may occur simultaneously.

Sec. 353.34(c)

Comment: Two parties state that the 24-hour time limit for deciding whether or not to withdraw proprietary information is unreasonably short because it does not provide an adequate opportunity for communication between the submitting party and its counsel. Three working days is suggested as a reasonable alternative.

Department's Position: Because the submitter of proprietary information can and should anticipate that disclosure under protective order is possible, the submitter also should anticipate having to decide whether or not to withdraw the information submitted. Nonetheless, we have modified the time limit to two business days in order to ensure that all parties have an opportunity to consider withdrawing the information after the Department makes its decision to disclose the information. Three days for this purpose would unnecessarily delay disclosure.

Sec. 353.34(d)

Comment: According to one party, there is no need to impose an arbitrary 15-day time limit on filing a request for a judicial protective order. When judicial action is instituted, all interested parties should be allowed to retain the information obtained under administrative protective order until they no longer have the opportunity to intervene in the judicial proceeding.

The preamble to the proposed rule states that the Department will not release proprietary information after it makes a judicially reviewable determination "because the need to prepare for judicial review is not an adequate reason for additional disclosure." Two parties argue that if the Department refuses to disclose final calculations (whether before or after a final determination), interested parties cannot identify clerical errors in the determination. Disclosure of final calculations under protective order would assist the Department in discovering and correcting these errors.

Department's Position: The proposed rule significantly expands the right of a person to retain protective order information after the end of a judicially reviewable segment of an administrative proceeding. The time limit set forth in this paragraph might be 120 days after the date of publication of an antidumping duty order, because [1] a party to the proceeding has 30 days from that date to file the summons and another 30 days to file the complaint. (2) the Department has 45 days from the latter date to file the administrative record, and (3) the party that has the information subject to administrative protective order has an additional 15 days to file a request for judicial protective order. To permit a party to retain the information until the party no longer has a right to intervene in the judicial proceeding would in effect move the deadline back to an indeterminate date late in the judicial proceeding. Unless the party promptly decides to pursue the matter in court, there is no reason to allow that party to retain the business proprietary information.

Continued retention of the documents merely would increase the risk that they might be lost or disclosed inadvertently.

Regarding disclosure of the Department's calculations after issuing its final determination, section 1333 of the 1988 Act requires correction of ministerial errors following a final determination. The Department has provided for such disclosure in the clerical error correction procedures (published at 53 FR 41617 (October 24,
1988) and 53 FR 5813 (February 26, 1988)) and in § 353.20(e) of these regulations. See the Department’s response to comments on § 353.20(e).

Sec. 353.34(e)

Comment: One party suggests that the regulations should include a strict time limit of 60 days for the issuance of a charging letter in investigations of APO violations. The commenter contends that these investigations now take so long that the Department’s commitment to impose sanctions for APO violations is in question.

Department’s Position: We have modified this paragraph to provide that allegations of protective orders are handled under the procedures of Part 354 of this title. In Part 354, we have adopted time limits for the investigation of whether there is reasonable cause to believe that an APO violation occurred in a proceeding and for the decision whether to issue a charging letter to the party in question. See the Department’s final rule entitled “Procedures for Imposing Sanctions for Violation of an Antidumping or Countervailing Duty Protective Order,” 53 FR 47916 (November 28, 1988).

Sec. 353.35

Comment: One party contends that this section should require the memorandum of an ex parte meeting to report all legal arguments and nonfactual representations made at the meeting. This revision should be made in order to comply with Congressional intent that all parties to the proceeding be “fully aware” of representations to the Department at ex parte meetings. H.R. Rep. No. 317, 96th Cong., 1st Sess. 77 (1979). This party also suggests that the regulations specify a deadline within five work days when such memoranda must be placed in the reading file, e.g., five work days after the ex parte meeting.

Department’s Position: This section conforms to the requirements of section 777(a)(3) of the Act, and is consistent with the cited legislative history of that section of the Act. The Department will continue to make every effort to place copies of ex parte meeting memoranda in the reading file after the meeting in question.

Sec. 353.36(e)

Comment: One party contends that paragraph (a)(1)(v)(B) violates section 776(b) of the Act by requiring verification on request during an administrative review when the Department has conducted no verification “during either of the two immediately preceding administrative reviews.” This party contends that section 776(b) requires verification (on request) unless the Department has conducted a verification during both of the two previous consecutive reviews. Moreover, the House Report accompanying the 1984 Act specifies that verification “would not be required if it has occurred upon timely request in the two immediately previous [administrative] reviews.” H.R. Rep. No. 725, 98th Cong., 2d Sess. 43 (1984).

Three parties contend that there is no statutory authority for the sampling procedure described in paragraph (a)(2). They believe the sampling authority in section 777A of the Act is limited to the use of sampling in analysis of sales and price information, and does not cover sampling in selection of respondents for questionnaire responses or verification. These parties argue that it would be unreasonable to apply the results of one company’s verification to other companies whose submissions have not been verified. Two of these parties contend that if, for the sake of administrative convenience, the Department refuses to verify a respondent’s submission, the data should be treated as the “best information available.” Any company that is willing to undergo verification is entitled to have its determination based on its own information. Moreover, because the Department cannot levy an antidumping duty when there are no sales at less than foreign market value, interested parties have an absolute right to verification and to have margins calculated based on the results of the individual verification.

Department’s Position: Section 776(b) of the Act requires the Department to conduct a verification, upon request, if no verification was conducted “during the 2 immediately preceding reviews” of the same order. In addition, the statute permits the Department to verify any administrative review for good cause. The legislative history explains the statutory directive, stating that the Department need not conduct a verification of the third administrative review if it has verified “in the two immediately preceding [administrative] reviews” of that order or finding. H.R. Rep. No. 725, 98th Cong., 2d Sess. 43 (1984). This means that the Department only is required to conduct a verification on request in the third review if there were no verification in the first or second review. This interpretation is consistent with the further admittance in the legislative history that the purpose of the amendment was to eliminate “an unnecessary administrative burden on the Department.”

The amendments implicitly overruled Al Tech Specialty Steel Corp. v. United States, 6 CIT 243 (1983), aff’d, 745 F.2d 632 (Fed. Cir. 1984), which held that the Department must conduct a verification of submissions in each administrative review. The legislative history also states that the amendment “generally codifies the current administrative practice of the Department of Commerce,” which was to verify information in administrative reviews when the Department believed there was good cause for verification. H.R. Conf. Rep. No. 1156, 98th Cong., 2d Sess. 177 (1984). Regarding the Department’s practice, see Stainless Steel Wire Rods from France, 48 FR 20890–9 (1983). In view of the language of section 776(b) and the legislative purpose, paragraph (a)(1)(v)(B) of the proposed rule is a reasonable interpretation of section 776(b) of the Act. Unless the Department “decides that good cause for verification exists” (§ 353.36(a)(1)(iv)), there is no need for verification in more than one out of three consecutive administrative reviews.

Regarding the authority to use sampling in selecting respondents that will receive questionnaires or in conducting verifications in administrative reviews of antidumping duty orders, section 777A of the Act states that the Department may use generally recognized sampling techniques “for the purpose of carrying out [administrative] reviews under section 751.” The Conference Report on the 1984 Act specifically describes the provision as expanding “the instances in which the administering authority may use sampling and averaging techniques * * * in carrying out [administrative] reviews of outstanding AD or CVD [sic] orders under section 751 * * *.” H.R. Conf. Rep. No. 1156, 98th Cong., 2d Sess. 186 (1984). The only qualification in section 777A is that “a significant volume of sales is involved or a significant number of adjustments to prices is required.” Under the circumstances described in § 353.36(a)(2), this qualification is satisfied.

Section 777A(b) specifically provides that the Department has exclusive authority to select “appropriate” samples and averages (whether of respondents or of individual sales or adjustments) that are “representative of the transactions under investigation.”
As to the comments that it is unreasonable to apply the results of one company's verification to another, the commenters either misunderstand the concept of sampling or are criticizing the inclusion in the statute of the Department's authority to sample. Nevertheless, we agree completely that sampling of companies for verification is a matter requiring particular care in selecting the sampling methodology in order to prevent distorted results.

We note that we have revised paragraph (a)(2) to clarify that the selection of a sample of companies or sales for verification could occur in an investigation as well as in an administrative review.

Sec. 353.36(c)

Comment: Regarding the timing of verification, one party would modify paragraph (c) to state that, whenever feasible, verification will take place prior to a preliminary determination. The party urges the Department to provide in the regulation that interested parties will be given a copy of the verification outline 10 days prior to verification. The commenter suggests that parties be given seven days to comment on the outline. This party believes that the agency should attempt to visit the domestic industry prior to verification to collect information about issues that should be addressed during verification.

This party also suggests that we add to the regulation a statement of procedures for issuing verification reports and receiving comments on the reports. The commenter recommends that the regulation require the Department to issue its report within 14 days of verification. In addition, they urge that the regulation provide that the verification report will include all verification exhibits; these exhibits should be released either publicly or under protective order, as appropriate. The Department's blanket policy of refusing to release verification exhibits prevents the active participation of the domestic industry in the investigation or review. The regulation also should provide seven days for comment after receipt of the report.

Department's Position: We have decided not to modify paragraph (c) to provide that "whenever feasible" verification will take place prior to the date of the preliminary determination. Although the Department does in practice conduct verification as early as possible, nothing is gained by placing on the Department an obligation to explain its decision to verify after a preliminary determination rather than before. The Department is as much concerned about the quality of the verification as about its timing. We conduct verification after the date of the preliminary determination when we determine that there is inadequate time or opportunity to conduct a thorough verification before that date.

The Department prepares verification outlines as far in advance of the scheduled dates for verification as possible. Normally all parties to the proceeding have an opportunity to submit comments and suggestions. This practice has worked well and there is no reason to define the practice or time limits in the regulation.

The Department places the highest priority on prompt preparation and release of verification reports. The amount of time, however, that is required to complete a verification report is a function of the complexity and length of verification, the date and place of verification, and other demands on the verifiers' time (such as statutory deadlines in other pending cases). Under these circumstances, regulatory deadlines are inappropriate. Similarly, the content of the verification report is an administratively best left to a case-by-case approach. Regarding the comment on release of verification exhibits, the Department's response to comments on § 353.34.

We note that we have modified paragraph (c) to reflect the Department's practice of verifying the completeness, as well as the accuracy, of information submitted. The Department considers completeness to be an indication of accuracy. See also § 353.37(a)(2).

Sec. 353.37

Comment: Three parties suggest that the regulation specify that when the inability to verify is not the fault of the respondent, the best information available will be deemed to be the factual information submitted. Another party argues that in cases when the inability to verify is the respondent's fault, the Department should not simply use the information submitted by petitioners as the "best information," but rather should use what is actually the best and most accurate information available to the Department.

According to two parties, the regulation should provide that, prior to using the best information available, the Department should be required to notify the producer or reseller of the deficiencies in its submissions and allow that party to correct or supplement the incomplete or inaccurate data. See also § 353.36(c).

Another party contends that the proposed regulation conflicts with the clear statutory directive that the agency must use the best information available if responses are incomplete, inaccurate, untimely, or cannot be verified. The regulation should be revised to state that the Secretary "shall," not "may," use the best information available in such instances.

Another party suggests that the regulations specify that when information cannot be verified or is not timely submitted, the Department shall note this in the public record so that interested parties will know that the "best information" will be used. The commenter explains that this will give importers advance notice of potential substantial assessments.

Department's Position: Verification is designed to establish the accuracy and completeness of a questionnaire response. If either of those factors cannot be established, regardless of fault, the Department must, under the statute, adopt the "best information otherwise available," which is the subject of this section. See Atlantic Sugar, Ltd. v. United States, 744 F.2d 1556 (Fed. Cir. 1984).

When the inability to verify is the respondent's fault, the Department generally uses information that is based on inferences adverse to the respondent when selecting the "best information available." See Atlantic Sugar Ltd. v. United States, 744 F.2d 1556, 1560 (Fed. Cir. 1984). We note that paragraph (b) is intended to permit, rather than require, use of factual information submitted in support of the petition as best information available. To make this point as clear as possible, we have modified the paragraph to state "may include" rather than "includes."

Prior to resorting to best information available, the Department as a matter of practice often allows a respondent to correct a deficiency in a submission. First, the Department may request a supplemental submission of information after it receives a deficient response to the questionnaire referred to in § 353.31(b). Second, the Department often permits a respondent to correct a deficiency during the verification process, depending on the nature and scope of the deficiency. Under § 353.31(b), the Department has the authority to request an additional submission at any time during the proceeding, but, under § 353.31(a), the respondent's right to submit factual information is subject to certain time limits necessitated by statutory deadlines. Although the statute does not require it, the Department usually does notify respondents of deficiencies in submissions.
In response to the comment, we have revised paragraph (a) of this section to indicate that the Secretary will use the "best information available" in the situations described in that section. As to the comment regarding notice in the record, that the best information available provision is being applied in a case, this would be literally impossible in cases involving thousands, sometimes hundreds of thousands, of pieces of discrete information. When practicing, the Department does identify, either in the Federal Register notice or elsewhere in the record of the proceeding, that the "best information available" was used.

Sec. 533.39

Comment: Several parties state that the time limits for submission of case briefs are unreasonable for one or more of the following reasons: (1) the Department often does not issue its verification reports until after the time limits expire; (2) the Department often does not provide information under protective order until shortly before or even after the time limits expire; and (3) respondents often do not obtain disclosure of the preliminary determination or results of review until two weeks after it is published and, at the same time, may be preparing for verification. Thus, the unreasonable time limits in paragraphs (b) and (c) make it impossible for interested parties to comment on important information in the record of the proceeding. Moreover, it is inappropriate for the Department to extend deadlines under protective order as late as may be do so in an investigation; and (4) permit separate submission of written comments on the verification report.

One party believes that the Department should distribute more evenly the time to file a case brief in an administrative review, just as he may do so in an investigation; and (4) permit separate submission of written comments on the verification report. One party believes that the Department should distribute more evenly the time to file a case brief in an administrative review, just as he may do in an investigation; and (4) permit separate submission of written comments on the verification report.

Regarding paragraph (b), one party suggests that, rather than requiring all issues relevant to the final determination or results of review to be "presented in full" in the case brief, the Department only should require all such issues to be identified; to the extent issues were not previously briefed, arguments should be presented in full. One party believes that the Department does not provide information under verification reports until after the time limits expire; and (3) respondents often do not obtain disclosure of the preliminary determination or results of review until two weeks after it is published and, at the same time, may be preparing for verification. Thus, the unreasonable time limits in paragraphs (b) and (c) make it impossible for interested parties to comment on important information in the record of the proceeding. Moreover, it is inappropriate for the Department to extend deadlines under protective order as late as may be do so in an investigation; and (4) permit separate submission of written comments on the verification report.

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Department's Position: The Department believes that the time limits in this section will provide all interested parties a reasonable opportunity to comment on the record of the proceeding. The reviewing court will be able to decide whether the submission should have been considered in the administrative proceeding.

Suggested changes include the following: (1) allow parties to comment on issues that arise after the proposed deadlines; (2) provide more realistic time periods for the requested briefs; (3) provide that the Secretary can alter the time in which to file a case brief in an administrative review, just as he may do so in an investigation; and (4) permit separate submission of written comments on the verification report. One party believes that the Department should distribute more evenly the time to file a case brief in an administrative review, just as he may do in an investigation; and (4) permit separate submission of written comments on the verification report. One party believes that the Department should distribute more evenly the time to file a case brief in an administrative review, just as he may do in an investigation; and (4) permit separate submission of written comments on the verification report. One party believes that the Department should distribute more evenly the time to file a case brief in an administrative review, just as he may do in an investigation; and (4) permit separate submission of written comments on the verification report.
We disagree with the comment that allowing other agencies to file case or rebuttal briefs will dilute the Department's authority and will hinder enforcement of the antidumping statute. In the past, other agencies (such as the Federal Trade Commission) have filed briefs in proceedings before the Department, and we did not in any way experience the problems that the commenter suggests will occur.

We note that, to be consistent with changes made in the countervailing duty regulations, we have added a new paragraph (b), which concerns requests for hearings. We have added this paragraph to allow sufficient time for all parties and the Department to prepare for a hearing. In addition, we have modified paragraph (e) (proposed paragraph (d)) to require the submitter of a case or rebuttal brief to serve a copy of the brief on any U.S. government agency that has submitted a case or rebuttal brief. We also have revised paragraphs (f) (proposed paragraph (e)) to provide that hearings ordinarily will be held seven days (instead of 14 days) after the scheduled date for submission of rebuttal briefs in an administrative review.

Subpart D

Note: As we explained in the preamble to the proposed rule, Subpart D simply collects in one subpart all of the provisions that explain the calculation of U.S. price or foreign market value, 51 FR 29055 (August 13, 1986). Except as indicated in the preamble to the proposed rule, the substance of the provisions in Subpart D remains unchanged from the current regulations. Nevertheless, many parties submitted comments on provisions in Subpart D that were not changed by the proposed rule. In this notice, we have summarized, and responded to, only those comments made on proposed changes to provisions now contained in Subpart D. Comments on provisions in Subpart D that were unchanged by the proposed rule are not germane to this rulemaking.

Sec. 353.41(e)

Comment: One party contends that the Department's proposal to remove the phrase "in the United States" from paragraph (e) is contrary to the statute and the Department's practice. Section 772(e) of the Act provides that the Department should seek a representative sample, and thus should examine foreign respondents that constitute an equivalent share of both volume and value of merchandise.

Department's Position: We disagree with the commenter's assumption that an examination of 60 percent of both the volume and value of the merchandise is necessary to constitute a representative measure of selling activity. In many cases, a value and volume measurement produce "roughly equivalent" results. That, however, is not always the case. In some instances, for example, products within the same class or kind have widely divergent prices because quality varies. As proposed, paragraph (b)(1) gives the Department discretion to consider either value or volume, or both, or to concentrate, as we have in some recent cases, on those producers or resellers that account for 60 percent of the volume or value (or both) of the merchandise.

Sec. 353.43

Comment: One party comments that the proposed regulation should clarify the circumstances under which the Department will consider offers for sales in determining foreign market value. They suggest that a sentence be added to paragraph (a) stating that the Secretary may consider offers for sales, even when actual sales have been made, if reference to those offers is relevant to establish the adequacy and accuracy of the actual sales reported. They explain that when sales of the subject merchandise in the home market have been made at low volumes, the Department should consider prices reflected in offers for sale to determine if prices reported for actual transactions are an accurate measure of foreign market value.

Department's Position: The situation described by the commenter is one in which the Secretary has the discretion under the regulations as proposed to depart from the "normal" rule of considering offers only in the absence of sales.

Sec. 353.45

Note: Because verifications are not required in all administrative reviews, we have revised paragraph (b) accordingly.

Sec. 353.52

Note: We are drafting a proposed rule and request for comments to implement the 1988 Act amendments regarding dumping by nonmarket economy countries.

Sec. 353.55

Comment: One party recommends that the Department include in the proposed regulation the paragraph contained in 353.14(c) of the current regulation concerning the consideration of price lists when making adjustments for differences in quantities. This party notes that the Department's preamble to the proposed rule states that the paragraph was deleted "because in substance it is identical to § 353.3(b) of the proposed rule." Section 353.3(b) concerns the publication of antidumping duty order data, however, and does not address with the issue of the consideration of price lists when making adjustments for differences in quantities.

Department's Position: The reference to § 353.3(b) was a typographical error. The correct reference is § 353.55(b).

However, for the sake of clarity, we have included the language contained in
§ 353.14(c) of the existing regulations as paragraph (d) of this section.

Sec. 353.56(b)(2)

Comment: One party argues that paragraph (b)(2) conflicts with section 353.41(e) in the treatment of indirect selling expenses incurred outside the United States. If the Department does not adopt their suggested change to § 353.41(e), which would insert "in the United States" in paragraph (e), they suggest that § 353.56(b)(2) be revised to clarify that the ESP offset cap is the amount of the adjustment allowed under section 772(c)(2) of the Act, not just the amount of indirect selling expenses incurred in the United States.

Department's Position: This paragraph has been revised to clarify that the ESP offset cap is the amount incurred "in selling the merchandise," which is the amount of the adjustment that would be made under § 353.41(e). That is, an adjustment would be made for the expenses of selling the merchandise, whether incurred in the United States or elsewhere. Note the definition of "the merchandise" in § 353.2(m). The phrase "expenses incurred in selling" is intended to convey the same meaning as "selling expenses" in the current regulation. To be consistent, we also have revised the proposed rule to clarify that the indirect selling expenses, whether incurred in the United States or elsewhere, may be offset by indirect selling expenses incurred on sales of such or similar merchandise, regardless of where incurred.

Sec. 353.59(a)

Comment: One party argues that the Department should have included in the proposed regulation the last sentence of the existing regulation providing that adjustments will not be disregarded if it will significantly affect the calculation results. The party believes that the deleted sentence clarifies that adjustments that would normally be viewed as insignificant should not be disregarded if doing so would result in dumping margins in cases where no margin would otherwise have been found, or vice versa. Because the Department indicated in the preamble to the proposed rule that the sentence was deleted only because it was redundant, the party argues that it be incorporated in the final rule in the interest of clarity.

Department's Position: We continue to believe the referenced sentence is redundant. The regulation is not intended to change the Department's practice.
Subpart A—Scope and Definitions

§ 353.1 Scope.

This part sets forth procedures and rules applicable to proceedings under Title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1673-1677h) (the "Act"), relating to the imposition of antidumping duties. This part incorporates the regulatory changes made pursuant to Title VI of the Trade and Tariff Act of 1984 (Pub. L. No. 98-573; October 30, 1984) and Title XVIII, Subtitle B, Chapter 8, of the Tax Reform Act of 1986 (Pub. L. No. 99-514, October 22, 1986).

§ 353.2 Definitions.


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

(d) Customs Service. "Customs Service" means the United States Customs Service of the United States Department of the Treasury.

(e) Department. "Department" means the United States Department of Commerce.

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

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

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

(g) Factual information. "Factual information" means:

(1) Initial and supplemental questionnaire responses;

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

(3) Other data or statements of fact; and

(h) Home market country. The "home market country" is the country in which the merchandise is produced.

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

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

(k) Interested party. "Interested party" means:

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

(2) The government of the home market country;

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

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

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

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

(l) Investigation. An "investigation" begins on the date of publication of notice of initiation of investigation and ends on the date of publication of the earliest of (1) notice of termination of investigation, (2) notice of rescission of investigation, (3) notice of a negative determination that has the effect of terminating the proceeding, or (4) an order.

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

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

(o) Party to the proceeding. "Party to the proceeding" means any interested party, within the meaning of paragraph (k) of this section, which actively participates, through written
The Secretary has delegated to the investigation, (4) a negative means a person's irrevocable offer to equivalent to a sale. A "likely sale" a contract to sell and a lease that is exporter.

foreign market value or U.S. price,
determination that has the effect of publication of a notice of initiation on the date of the filing of a petition or appropriate.

reviewable decision will not confer on judicial review.

judicially reviewable segment of the proceeding.

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

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

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

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

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

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

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

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

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

(b) Proprietary information. The Secretary normally will consider the following to be proprietary information, if not designated proprietary 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, (ii) dates of sale, (iii) product descriptions except as described in paragraph (b)(1), or (iv) order numbers);

(6) The names of particular customers, distributors, or suppliers (but not destination of sale or designation of type of customer, distributor, or supplier, unless the designation or designation would reveal the name);

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

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

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

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

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

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

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

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

(b) Amendments made by sections 602, 605, 611, 612, and 620 of the 1984 Act which affect authorities administered by the Secretary take effect immediately with respect to all investigations and administrative reviews begun on or after October 30, 1984.
In general. (1) If the Secretary determines from available information, including information obtained during a period of monitoring under paragraph (c) of this section, that an investigation is warranted with respect to the merchandise, the Secretary will initiate an investigation and publish in the Federal Register notice of “Initiation of Antidumping Duty Investigation.”

(2) The notice will include:
   (i) A description of the merchandise, after consultation as appropriate with the Commission;
   (ii) The name of the home market country and, if the merchandise is imported from a country other than the home market country, the name of the intermediate country (§ 353.47) or country through which the merchandise is transshipped (§ 353.46(c)); and
   (iii) A summary of the available information that would, if accurate, support the imposition of antidumping duties.

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

(c) Persistent dumping monitoring.
   (1) The Secretary may monitor, for a period not to exceed one year, imports from an additional supplier country of the same class or kind of merchandise as the merchandise which is subject to two or more orders under this section or the Secretary concludes from available information, including information in a request for monitoring under this paragraph, that:
      (i) There is reason to believe or suspect an extraordinary pattern of persistent injurious dumping exists with regard to shipments from one or more additional supplier countries; and
      (ii) This extraordinary pattern is causing a serious commercial problem for the industry.
   (2) For the purposes of this section, “additional supplier country” means a country regarding which no order is in effect and no investigation is pending under this part as to the class or kind of merchandise referred to in paragraph (c)(1) of this section.
   (3) To the extent practicable, the Secretary will expeditiously begin any investigation initiated under paragraph (a) of this section as a result of monitoring under paragraph (c)(1) of this section.

§ 353.12 Petition requirements.
   (a) In general. Any interested party, as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2, may file on behalf of an industry a petition under this section requesting the imposition of antidumping duties equal to the alleged amount of the dumping margin, if that person has reason to believe that:
      (1) The merchandise is being, or is likely to be, sold at less than fair value; and
      (2) That industry is materially injured, or its establishment is materially retarded by dumping. Factual information in the petition shall be certified, as provided in § 353.31(i).
   (b) Contents of petition. The petition shall contain the following, to the extent reasonably available to the petitioner:
      (1) The name and address of the petitioner and any person the petitioner represents;
      (2) The identity of the industry on behalf of which the petitioner is filing, including the names and addresses of other persons in the industry (if numerous, provide information at least for persons that, based on publicly available information, individually accounted for two percent or more of the imports).

§ 353.6 De minimis weighted-average dumping margins.
   (a) Disregarding de minimis weighted-average dumping margins. Except as provided in paragraph (b), the Secretary will disregard any weighted-average dumping margin that is less than 0.5% ad valorem, or the equivalent specific rate.
   (b) Assessment of de minimis margin. In cases of assessment of an antidumping duty, the Secretary will not disregard any de minimis dumping margin.

Subpart B—Antidumping Duty Procedures

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

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the Secretary may implement the amendments of the 1984 Act at a date later than October 30, 1984, if the Secretary determines that implementation in accordance with paragraph (a) or (b) of this section would prevent the Department from complying with other requirements of law.
or material retardation, as described in 19 CFR 207.31 and 207.26;
(12) If the petitioner alleges "critical circumstances" under § 353.16, factual information regarding:
(i) Material injury which is difficult to repair;
(ii) Massive imports in a relatively short period; and
(iii) Either: (A) A history of dumping; or (B) The importer's knowledge that the producer or reseller was selling the merchandise at less than its foreign market value, as described in § 353.16(a); and
(13) Any other factual information on which the petitioner relies.

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

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

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

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

(g) Notification of representative of the home market country. Upon receipt of a petition, the Secretary will deliver a public version of the petition, as described in § 353.31(a)(2), to a representative in Washington, DC, of the government of the home market country.

(h) Assistance to small businesses: additional information.

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

(2) For additional information concerning petitions, contact the Deputy Assistant Secretary for Investigations, International Trade Administration, Room B099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, DC 20230; (202) 205-2731.

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

The information collection requirements in paragraph (b) of this section have been approved by the Office of Management and Budget under control number 0625-0106.

§ 353.13 Determination of sufficiency of petition.

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

(b) Notice of initiation. If the Secretary determines that the petition is sufficient under paragraph (a), the Secretary will initiate an investigation and publish in the Federal Register notice of "Initiation of Antidumping Duty Investigation." The notice will include the information described in § 353.11(a)(2). The Secretary will notify the Commission at the time of initiation of the investigation and will make available information at the time which the Secretary accepts from an interested party, as defined in paragraph (k)(1) or (k)(2) of § 353.2.

§ 353.15 Preliminary determination.

(a) In general. (1) Not later than 180 days after the date of filing of a petition or the date of publication of notice of initiation under § 353.11, the Secretary will make a determination based on the available information at the time whether there is a reasonable basis to believe or suspect that the merchandise is being sold at less than fair value. The Secretary will not make the determination unless the Commission has made an affirmative preliminary determination.

(2) The Secretary's determination will include:

(i) The factual and legal conclusions on which the determination is based;
(ii) The estimated weighted-average dumping margin, if any, for each person investigated and an appropriate rate for persons not investigated; and
(iii) A preliminary finding on critical circumstances, if appropriate, under § 353.16(b)(2)(i).

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

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

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

§ 353.14 Request for exclusion from antidumping duty order.

(a) Any producer or reseller that desires exclusion from an antidumping duty order must submit to the Secretary, not later than 80 days after the date of publication of the notice of initiation under § 353.31 or 353.13, an irrevocable written request for exclusion.

(b) The person must submit with the request:

(1) The person's certification that:

(i) There is no dumping margin on the merchandise sold or likely to be sold, as defined in § 353.2(1), by the person during the minimum period described in § 353.4(b)(1); and

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

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

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

§ 353.15 Preliminary determination.

(a) In general. (1) Not later than 180 days after the date of filing of a petition or the date of publication of notice of initiation under § 353.11, the Secretary will make a determination based on the available information at the time whether there is a reasonable basis to believe or suspect that the merchandise is being sold at less than fair value. The Secretary will not make the determination unless the Commission has made an affirmative preliminary determination.

(2) The Secretary's determination will include:

(i) The factual and legal conclusions on which the determination is based;
(ii) The estimated weighted-average dumping margin, if any, for each person investigated and an appropriate rate for persons not investigated; and
(iii) A preliminary finding on critical circumstances, if appropriate, under § 353.16(b)(2)(i).

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

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

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

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(b) The person must submit with the request:

(1) The person's certification that:

(i) There is no dumping margin on the merchandise sold or likely to be sold, as defined in § 353.2(1), by the person during the minimum period described in § 353.4(b)(1); and

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

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

(c) The Secretary will investigate requests for exclusion to the extent practicable in each investigation.
(b) Postponement in extraordinarily complicated investigation. If the Secretary decides the investigation is extraordinarily complicated, the Secretary may postpone the preliminary determination to not later than 210 days after the proceeding begins. The Secretary will base the decision on express findings that:

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

2. The investigation is extraordinarily complicated by reason of (i) the large number or complex nature of the transactions or adjustments under Subpart D of this part, (ii) novel issues raised, or (iii) the large number of producers and resellers; and

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

(c) Postponement at the request of the petitioner. If the petitioner, not later than 25 days before the scheduled date for the Secretary's preliminary determination, requests a postponement and states the reasons for the request, the Secretary will postpone the preliminary determination to not later than 210 days after the date of filing of the petition, unless the Secretary finds compelling reasons to deny the request.

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

(e) Expedited preliminary determination. Not later than 75 days after the initiation of an investigation under § 353.13, the Secretary will review the record of the first 60 days of the investigation. If the available information is sufficient for the Secretary to make a preliminary determination, the Secretary will disclose to the petitioner, and any party to the proceeding that has requested disclosure, all available public and proprietary information (subject to the requirements of § 353.34). If, not later than three business days after disclosure, each party to whom disclosure was made furnishes an irrevocable written waiver of verification and agrees to a preliminary determination based on information in the record on the 60th day of the investigation, the Secretary will make an expedited preliminary determination not later than 90 days after initiation of the investigation.

(f) Commission access to information. The Secretary will make available to the Commission and to employees of the Commission's own initiative in an investigation under § 353.11, the Secretary will make a finding whether:

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

2. The importer knew or should have known that the producer or reseller was selling the merchandise at less than its foreign market value: and

3. There have been massive imports of the merchandise over a relatively short period.

(b) Preliminary finding. (1) If the petitioner submits the allegation of critical circumstances not later than 30 days before the scheduled date for the Secretary's final determination under § 353.20, the Secretary, based on the available information, will make a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances as described in paragraph (a) of this section exist. The Secretary will issue the preliminary finding:

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

(ii) Not later than 90 days after the Secretary ordered suspension of liquidation either as part of an affirmative preliminary or final determination. If the final finding is negative and if the Secretary made an affirmative preliminary finding of critical circumstances, the Secretary will order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after 90 days before the date the Secretary ordered suspension of liquidation either as part of an affirmative preliminary or final determination.

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

(d) Final finding. For any allegation submitted not later than 21 days before the scheduled date for the Secretary's final determination under § 353.20, the Secretary will make a final finding on critical circumstances. The final finding is affirmative and if the Secretary did not make an affirmative preliminary finding of critical circumstances, the Secretary will order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after 90 days before the date the Secretary ordered suspension of liquidation either as part of an affirmative preliminary or final determination. If the final finding is negative and if the Secretary made an affirmative preliminary finding of critical circumstances, the Secretary will end the retroactive suspension of liquidation ordered under paragraph (c) of this section, and will instruct the Customs Service to release the cash deposit or bond.

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

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

(i) The volume and value of the imports; and

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

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

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

§ 353.17 Termination of investigation.

(a) Withdrawal of petition. (1) Except as provided in paragraph (b) of this section, the Secretary may terminate an investigation upon withdrawal of the petition by the petitioner, or on the Secretary's own initiative in an investigation initiated under § 353.11, after notifying all parties to the proceeding and after consultation with the Commission. The Secretary may not terminate an investigation unless the Secretary concludes the termination is in the public interest.

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

(b) Withdrawal of petition based on acceptance of quantitative restriction agreements. (1) The Secretary may not terminate under paragraph (a) of this section an investigation by accepting an understanding or other kind of agreement with the government of the home market country to restrict the volume of the merchandise unless the Secretary, taking into account the factors listed in section 354(a)(2)(B) of the Act, is satisfied that termination is in the public interest.

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

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

(d) End of suspension of investigation. If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension ended on the date of publication of the notice of termination under paragraph (a) of this section or on the date of publication of a negative determination referred to in paragraph (c) of this section, and will instruct the Customs Service to release any cash deposit or bond.

§ 353.18 Suspension of investigation.

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

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

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

(b) Agreement eliminating injurious effect. (1) As provided in this paragraph and paragraph (b)(2) of this section, the Secretary may suspend an investigation at any time before the Secretary's final determination by accepting an agreement with exporters (producers and resellers) that account for substantially all of the merchandise:

(i) To eliminate completely injurious effects of the merchandise; and

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

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

(ii) The agreement will ensure that, for each entry of each exporter, the dumping margin will not exceed 3 percent of the total average dumping margin for that exporter stated in the Secretary's preliminary determination (or final determination in investigations continued under § 353.18(g)).

(c) Definition of "substantially all." For purposes of paragraphs (a) and (b)(2) of this section, exporters which account for "substantially all" of the merchandise means exporters (producers and resellers) that have accounted for not less than 85 percent by value or volume of the merchandise during the period for which the Department is measuring dumping in the investigation or such other period that the Secretary considers representative.

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

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

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

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

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

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

(2) The Secretary will:

(i) Not later than 30 days before the date the Secretary suspends the investigation, notify all parties to the proceeding of the proposed suspension and provide to the petitioner a copy of...
the agreement preliminarily accepted by the Secretary (the agreement shall contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of this section); and
(ii) Consult with the petitioner concerning the proposed suspension.
(3) The Secretary will provide all interested parties and United States government agencies an opportunity to submit, not later than 10 days before the scheduled date for the Secretary's final determination, written argument and factual information concerning the proposed suspension.

(h) Acceptance of agreement. (1) If the Secretary accepts an agreement to suspend an investigation, the Secretary will publish in the Federal Register notice of "Suspension of Antidumping Duty Investigation," including the text of the agreement. If the Secretary has already published notice of affirmative preliminary determination, the Secretary will include that notice. In accepting an agreement, the Secretary may rely on factual or legal conclusions the Secretary reached in or after the affirmative preliminary determination.
(2) If the Secretary suspends an investigation based on an agreement under paragraph (a) of this section, the Secretary will not order the suspension of liquidation of entries of the merchandise. If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension of liquidation ended on the effective date of notice of suspension of investigation and will instruct the Customs Service to release any cash deposit or bond.
(3) If the Secretary suspends an investigation based on an agreement under paragraph (b) of this section, the Secretary will order the suspension of liquidation to continue or to begin, as appropriate. The suspension of liquidation will not end until the Commission completes any requested review, under section 754(h) of the Act, of the agreement. If the Commission receives no request for review within 20 days after the date of publication of the notice of suspension of investigation, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication, and will instruct the Customs Service to release any cash deposit or bond.
(4) If the Commission undertakes a review of an agreement under section 734(b) of the Act and determines that the agreement will not eliminate the injurious effect, the Secretary will resume liquidation on the date of publication of the Commission's determination as if the Secretary's affirmative preliminary determination had been made on that date. If the Commission determines that the agreement will eliminate the injurious effect, the Secretary will continue the suspension of investigation, order the suspension of liquidation ended on the date of publication of the Commission's determination, and instruct the Customs Service to release any cash deposit or bond.

(i) Continuation of investigation. (1) Not later than 20 days after the date of publication of the notice of suspension of investigation, an exporter or exporters accounting for a significant proportion of exports of the merchandise or an interested party, as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2, may request in writing that the Secretary continue the investigation. The party shall simultaneously file a request with the Commission to continue its investigation.
(2) Upon receiving the request, the Secretary and the Commission will continue the investigation.
(i) If the Secretary and the Commission make affirmative final determinations, the suspension agreement will remain in effect in accordance with the factual and legal conclusions in the Secretary's final determination. This paragraph does not affect the provisions of paragraph (h) of this section regarding suspension of liquidation.
(ii) If the Secretary or the Commission makes a negative final determination, the agreement shall have no force or effect.
(j) Merchandise imported in excess of allowed quantity. (1) If the Secretary determines that the violation was intentional, the Commissioner of Customs, or the Secretary, as appropriate, will order the suspension of liquidation of entries of the merchandise in excess of any quantity allowed by paragraph (f) or by an agreement under paragraph (a) of this section.
(2) If the Secretary or the Commission determines that the agreement no longer meets the requirements of section 734(d) of the Act, but does not have sufficient information to take action under paragraph (a) of this section, the Secretary will publish in the Federal Register notice of "Invitation for Comment on Antidumping Duty Suspension Agreement."

(k) Determination after notice and comment. (1) If the Secretary has reason to believe that a signatory exporter has violated an agreement or that an agreement no longer meets the requirements of section 734(d) of the Act, but does not have sufficient information to take action under paragraph (a) of this section, the Secretary will publish in the Federal Register notice of "Invitation for Comment on Antidumping Duty Suspension Agreement."
(2) After publication of the notice inviting comment and after consideration of comments received the Secretary will:
(i) If the Secretary determines that any signatory exporter has violated the agreement, take appropriate action as described in paragraphs (a)(1) through (a)(5) of this section: or
(ii) If the Secretary determines that the agreement no longer meets the requirements of section 734(d) of the Act:
(A) Take appropriate action as described in paragraphs (a)(1) through
§ 353.20 Final determination.

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

(2) The Secretary's determination will include:

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

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

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

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

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

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

(b) Postponement of final determination. (1) If, not later than the scheduled date for the Secretary's final determination, the petitioner in a proceeding in which the Secretary issued a negative preliminary determination, or the producers or resellers of a significant proportion of the merchandise in a proceeding in which the Secretary issued an affirmative preliminary determination, request in writing a postponement and state the reasons for the request, the Secretary may revise the agreement to include additional signatory exporters.

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

§ 353.21 Antidumping duty order.

Not later than seven days after receipt of notice of the Commission's affirmative final determination under section 735 of the Act, the Secretary will publish in the Federal Register an "Antidumping Duty Order" that:

(a) Instructs the Customs Service to assess antidumping duties on the merchandise, in accordance with the methodology used in making the determination.

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

(2) If the Secretary decides to postpone the final determination under paragraph (b)(1) of this section, the Secretary will notify all parties to the proceeding and will publish in the Federal Register notice of "Postponement of Final Antidumping Duty Determination," stating the reason for the postponement.

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

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

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

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equal to the amount of the estimated weighted-average dumping margin stated in the Secretary’s final determination;

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

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

§ 353.22 Administrative review of orders and suspension agreements.

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

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

(3) During the same month, an importer of the merchandise may request in writing that the Secretary conduct an administrative review of all producers or resellers of the merchandise imported by that importer.

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

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

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

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

(1) Not later than 15 days after the anniversary month, publish in the Federal Register notice of “Initiation of Antidumping Duty Administrative Review.”

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

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

(4) Issue preliminary results of review, based on the available information, that includes:

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

(ii) The weighted-average dumping margin, if any, and notify all parties to the proceeding;

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

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

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

(7) Not later than 365 days after the anniversary month, issue final results of review that include:

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

(ii) The weighted-average dumping margin, if any, and notify all parties to the proceeding;

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

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

(10) Promptly after publication of the notice of final results, instruct the Customs Service to assess antidumping duties on future entries.

(d) Possible cancellation or revision of suspension agreement. If during an administrative review the Secretary determines or has reason to believe that a signatory exporter has violated a suspension agreement or that the agreement no longer meets the requirements of § 353.18, the Secretary will take appropriate action under § 353.18. The Secretary may suspend the antidumping duties on future entries.

(11) Automatic assessment of duty.

(12) Antidumping duty administrative review.
equal to the cash deposit of, or bond for, estimated antidumping duties required on that merchandise at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposits previously ordered.

(2) If the Secretary receives a timely request under paragraph (a)(1), (a)(2), or (a)(5) of this section, the Secretary in accordance with paragraph (e)(1) of this section will instruct the Customs Service to assess antidumping duties, and to continue to collect the cash deposits, on the merchandise not covered by the request.

(f) Changed circumstances review.

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

(i) Publish in the Federal Register notice of "Initiation of Changed Circumstances Antidumping Duty Administrative Review;"

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

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

(iv) Issue preliminary results of review based on the available information that included changed circumstances sufficient to warrant a review exist, the Secretary will:

(i) Publish in the Federal Register notice of "Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review;"

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

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

(v) Issue final results of review that include:

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

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

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

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

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

(ix) Promptly after publication of the notice of final results, instruct the Customs Service to accept, in lieu of the cash deposit of estimated antidumping duties under § 353.21(b), a bond for each entry of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of initiation and through the date not later than 90 days after the date of publication of the order:

(3) The Secretary will not initiate an administrative review under paragraph (f) of this section before the end of the second annual anniversary month (the calendar month in which the anniversary of the date of publication of the order or suspension occurs) after the date of publication of the Secretary's affirmative preliminary determination or suspension of investigation, unless the Secretary finds that good cause exists.

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

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

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

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

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

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

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

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

(B) Instruct the Customs Service to accept, in lieu of the cash deposit of estimated antidumping duties under § 353.21(b), a bond for each entry of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of initiation and through the date not later than 90 days after the date of publication of the order;

(viii) Notify all parties to the proceeding which request disclosure an explanation of the calculation methodology used for the Secretary's analysis; and

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

§ 353.23 Provisional measures deposit cap.

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

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

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

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

§ 353.25 Revocation of orders; termination of suspended investigation.

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

(i) The person's certification that the person sold the merchandise at not less than foreign market value; and

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

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

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

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

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

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

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

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

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

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

(ii) Conduct a verification under § 353.36;

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

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

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

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

(3) If the Secretary revokes an order or revokes an order in part, the Secretary will order the suspension of liquidation ended for the merchandise covered by the revocation on the first day after the period under review, and will instruct the Customs Service to release any cash deposit or bond.
(vii) If the Secretary’s final decision under paragraph (d)(3)(vii) of this section is affirmative, publish with the notice of final results of review, under § 353.22(f)(1)(ix), notice of “Revocation of Order (in Part)” or, if appropriate, “Termination of Suspended Investigation.”

§ 353.26 Reimbursement of antidumping duties.

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

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

(ii) Reimbursed to the importer.

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

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

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

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

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

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

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

Subpart C—Information and Argument

§ 353.31 Submission of factual information.

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

(ii) For the Secretary’s final determination, seven days before the scheduled date on which the verification is to commence:

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

(iii) For the Secretary’s final results of an expanded review under § 353.22(g), a date specified by the Secretary.

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

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

(b) Questionnaire responses and other submissions on request.

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

(ii) If the Secretary under paragraph (d) of this section revokes an order or suspended investigation, the Secretary will publish in the Federal Register notice of “Revocation of Order (in Part)” or, if appropriate, “Termination of Suspended Investigation.”
Deputy Assistant Secretary for Import Administration, the Deputy Assistant Secretary for Investigations, the Deputy Assistant Secretary for Compliance, and the office or division director responsible for the proceeding. An extension must be approved in writing.

Subject to the other provisions of paragraph (b) of this section, questionnaire responses in administrative reviews must be submitted not later than 60 days after the date of receipt of the questionnaire.

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

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

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

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

(2) The Secretary will not consider any allegation in an investigation that the petitioner lacks standing unless the allegation is submitted, together with supporting factual information, not later than 10 days before the scheduled date or the Secretary's preliminary determination.

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

(d) Where to file; time of filing. Address and submit documents to the Secretary of Commerce. Attention: Import Administration, Central Records Unit, Room B-698, U.S. Department of Commerce, 14th and Constitution Ave., N.W., Washington, D.C. 20230, between the hours of 8:30 a.m. and 5:00 p.m. on business days. For all time limits in this part, the Secretary will consider documents received when stamped by the Central Records Unit with the date and time of receipt. If the time limit expires on a non-business day, the Secretary will accept documents that are filed on the next following business day.

(e) Format and number of copies—

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

(2) Documents. In an investigation, submit 10 copies of any document, except a computer printout, and, if a person has requested that the Secretary treat part of the document as proprietary information, submit five copies of a public version of the document, including any public summaries required under §353.32(b) as substitutes for the portions for which the person has requested proprietary treatment. In an administrative review, submit seven copies and three copies respectively. In an investigation or administrative review, submit documents, if prepared for that segment of the proceeding, on letter-size paper, single-sided and double-spaced. Securely bind each copy as a single document with any letter of transmittal as the first page of the document. Mark the first page of each document in the upper right-hand corner with the following information in the following format:

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

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

(iii) On the third line, state whether the document is for an investigation or an administrative review and, if the latter, the period of review;

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

(v) For public versions of proprietary documents, complete the marking as required in paragraphs (i)–(iv) above for the proprietary document, but conspicuously mark the first page "Public Version."

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

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

(g) Service of copies on other parties. With the exception of petitions, proposed suspension agreements submitted under §353.18(g)(1)(i), and factual information submitted under §353.32(a) that is not required to be served on an interested party, the submitter of a document shall serve a copy, by first class mail or personal service, on any interested party on the Department's service list. The submitter shall attach to each document a certificate of service listing the parties served and, for each, the date and method of service.

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

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

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

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

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

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

I, (name), of (law or other firm), counsel or representative to (interested party), certify that (1) I have read the attached submission, and (2) based on the information made available to me by (interested party), I have no reason to believe that this submission contains any material misrepresentation or omission of fact.
§ 353.32 Request for proprietary treatment of information.
(a) Submission and content of request. (1) Any person who submits factual information to the Secretary in connection with a proceeding may request that the Secretary treat that information, or any specified part, as proprietary.
(2) The submitter shall identify proprietary information on each page by placing brackets around the proprietary information and clearly stating at the top of each page containing such information “Proprietary Treatment Requested.” The submitter shall provide a full explanation why each piece of factual information subject to the request is entitled to proprietary treatment under § 353.4. The request and explanation shall be a part of or securely bound with the document containing the information.
(b) Public summary. All requests for proprietary treatment shall include or be accompanied by:
(1) An adequate public summary of all proprietary information, incorporated in the public version of all documents (generally, numeric data are adequately summarized if grouped or presented in terms of indices, or figures within 10 percent of the actual figure, and if an individual portion of the data is voluminous, at least one percent representative of that portion is individually summarized in this manner); or
(2) A statement itemizing those portions of the proprietary information which cannot be summarized adequately and all arguments supporting that conclusion for each portion.
(c) Agreement to release. All requests for proprietary treatment shall include either an agreement to permit disclosure under administrative protective order, or a statement itemizing which portions of the proprietary information should not be released under administrative protective order, and all arguments supporting that conclusion for each portion. The Secretary ordinarily will not provide the submitter further opportunity for argument on whether to grant a request for disclosure under administrative protective order.
(d) Return of information as a result of nonconforming request. The Secretary may return to the submitter any factual information for which the submitter requested proprietary treatment when the request does not conform to the requirements of this section and in any event without the information. If the Secretary returns the information, the Secretary will provide a written explanation of the reasons why it does not conform and will not consider it unless it is resubmitted with a new request which complies with the requirements of this section not later than two business days after receipt of the Department's explanation for rejection of the information.
(e) Status during consideration of request. While considering whether to grant a request for proprietary treatment, the Secretary will not disclose or make public the information. The Secretary normally will decide not later than 14 days after the Secretary receives the request.
(f) Treatment of proprietary information. Unless the Secretary otherwise provides, the person to whom the Secretary discloses information shall not disclose the information to any other person. The Secretary may disclose factual information which the Secretary decides is proprietary only to:
(1) A representative of an interested party who requests and is granted an administrative protective order under § 353.34;
(2) An employee of the Department directly involved in the proceeding for which the information is submitted;
(3) An employee of the Commission directly involved in the proceeding for which the information is submitted;
(4) An employee of the Customs Service directly involved in conducting a fraud investigation relating to an antidumping duty proceeding on the merchandise;
(5) Any person to whom the submitter specifically authorizes (in writing) disclosure; and
(6) A charged party or counsel for the charged party under Part 354 of this title (19 CFR Part 354).
(g) Denial of request for proprietary treatment. If the Secretary decides that the factual information does not warrant proprietary treatment in whole or in part, the Secretary will notify the submitter. Unless the submitter agrees that the information be considered public, the Secretary will return the information to the submitter with written notice stating the reasons for return of the information and will not consider it in the proceeding.
§ 353.33 Information exempt from disclosure.
Privileged or classified information is exempt from disclosure to the public or to representatives of interested parties. 
§ 353.34 Disclosure of proprietary information under administrative protective order.
(a) In general. The Secretary may disclose, or require to be disclosed, proprietary information under an administrative protective order to an attorney or other representative of a party to the proceeding if the Secretary decides that the representative has stated a sufficient need for disclosure and would adequately protect the proprietary status of the information disclosed. In deciding whether to disclose information under administrative protective order, the Secretary will consider the probable effectiveness of sanctions for violation of the order, including those described in paragraph (b)(4) of this section. The Secretary also will consider the ability of the Secretary to obtain factual information in the future.
(b) Request for disclosure. (1) A representative must file a request for disclosure under administrative protective order not later than the later of:
(i) 30 days after the date of publication in the Federal Register of the notice of initiation under § 353.11 or § 353.13, or the notice of initiation of administrative review under § 353.22; or
(ii) 10 days after the date the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under § 353.38, are due.
(2) The representative must file the request for disclosure on the standard form provided by the Secretary (Form ITA-367). The standard form will require only such particularity in the description of the requested information as is consistent with both the criteria the Secretary uses to decide whether to disclose, and with the fact that a request may be made for factual information not yet submitted.
(3) The request shall obligate the representative:
(i) Not to disclose the proprietary information to anyone other than the submitter and other persons authorized by an administrative protective order to have access to the information;
(ii) To use the information solely for the segment of the proceeding in which it was submitted;
(iii) To ensure the security of the proprietary information at all times; and
(iv) To report promptly to the Secretary any apparent violation of the terms of the protective order.
(4) The request shall contain an acknowledgment by the representative that:
(i) A representative determined to have violated a protective order may be subject to any or all of the sanctions listed in Part 354 of this title; and
(ii) The firm of which a person determined to have violated a protective order is a partner, associate, or employee, and any partner, associate,
§ 353.35 Ex parte meeting.

The Secretary will prepare for the official record a written memorandum of any ex parte meeting between any person providing factual information in connection with a proceeding and the person to whom the Secretary has delegated the authority to make the decision in question or the person making a final recommendation to that person. The memorandum will include the date, time, and place of the meeting, the identity and affiliation of all persons present, and a public summary of the factual information submitted.

§ 353.36 Verification of Information.

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

(i) A final determination under § 353.18(i) or § 353.20 with proof that the decision in question or the person making a final recommendation to that person.

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

(iii) A revocation under § 353.25;

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

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

(A) An interested party, as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2, is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted.

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

§ 353.37 Written argument and hearings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 353.41 Calculation of United States price.

(a) In general. "United States price" means the purchase price or the exporter's sales price of the merchandise, as appropriate. In calculating the United States price, the Secretary will use sales or, in the absence of sales, likely sales, as defined in § 353.2(l).

(b) Purchase price. "Purchase price" means the price at which the merchandise is sold or likely to be sold prior to the date of importation, by a producer or reseller of the merchandise for exportation to the United States. The Secretary will make appropriate adjustments for costs and expenses under paragraph (d) of this section if they are not reflected in the sales price to the importer. Whenever purchase price is used and there is reason to believe that the sales price to the importer does not reflect the cost and expenses incident to bringing the merchandise from the country of exportation, then the Secretary will make appropriate adjustments for such cost and expenses under paragraph (d) of this section.

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

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

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

(ii) The amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of exportation of the merchandise;

(iii) The amount of any taxes imposed in the country of exportation directly on the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of exportation of the merchandise;

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

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

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

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

(ii) Any export tax, duty, or other charge imposed by the country of exportation on the exportation of the merchandise, other than an export tax, duty, or other charge described in section 771(6)(C) of the Act.

(e) Additional adjustments to exporter's sales price. The Secretary
also will reduce the exporter's sales price by the amount of:
(1) Commissions for selling in the United States the merchandise;
(2) Expenses generally incurred by or for the account of the exporter in selling the merchandise, or attributable under generally accepted accounting principles to the merchandise; and
(3) Any increased value resulting from a process of production or assembly performed on the merchandise after importation and before sale to a person who is not the exporter of the merchandise, which value the Secretary generally will determine from the cost of material, fabrication, and other expenses incurred in such production or assembly.

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

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

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

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

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

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

§ 353.44 Sales at varying prices.
(a) Weighted-average price or prices. If the sales which the Secretary may use to calculate foreign market value vary in price (after allowances provided for in §§ 353.35, 353.56, 353.57, and 353.58), the Secretary normally will calculate foreign market value based on the weighted average of those prices.

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

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

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

§ 353.45 Transactions between related persons.
(a) Sales to a related person. If a producer or reseller sold such or similar merchandise to a person related as described in section 771(13) of the Act, the Secretary will generally will calculate foreign market value based on that sale only if satisfied that the price is comparable to the price at which the producer or reseller sold such or similar merchandise to a person not related to the seller.

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

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

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

(3) When United States price is based on exporter's sales price, under §353.41(c), the Secretary will calculate foreign market value, under paragraph (a)(1), based on the price at the time the importer sells the merchandise in the United States to a person not related under section 776(c)(4) of the Act.

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

(c) Transactions. If the merchandise is not imported directly from the home market country but is merely transshipped through another country, the Secretary will not, except under §353.47, calculate foreign market value based on the price at which such or similar merchandise is sold in the country of transshipment.

§ 353.47 Exportation from an intermediate country.
The Secretary will calculate the foreign market value of such or similar merchandise based on sales in the intermediate country rather than sales in the home market country if:
(a) A reseller in an intermediate country purchases the merchandise from the producer;
(b) The producer of the merchandise does not know (at the time of the sale to that reseller) the country to which such reseller intends to export the merchandise;
(c) The merchandise enters the commerce of the intermediate country but is not substantially transformed in that country; and
(d) The merchandise subsequently is exported to the United States.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) For consumption in that country; or

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

(ii) To another country, including the United States; or
(2) The constructed value of such or similar merchandise in a non-state-controlled-economy country, calculated in accordance with § 353.50.

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

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

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

(3) The United States.

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

§ 353.54 Claims for adjustment to foreign market value.

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

§ 353.55 Differences in quantities.

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

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

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

(2) The producer demonstrates to the Secretary's satisfaction that the discounts reflect savings specifically attributable to the production of the different quantities.

(c) Sales with quantity discounts in calculating weighted-average foreign market value. If the producer or reseller does not satisfy the conditions in paragraph (b), the Secretary will calculate foreign market value on a weighted-average price or prices that include sales at a discount.

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

§ 353.56 Differences in circumstances of sale.

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

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

(b) Special rule. (1) Notwithstanding paragraph (a), the Secretary normally will make a reasonable allowance for other selling expenses if the Secretary makes a reasonable allowance for commissions in one of the markets under consideration and no commission is paid in the other market under consideration, but the Secretary will limit the amount of such allowance to the amount of the other selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

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

(c) Reasonable allowance. In deciding what is a reasonable allowance for any difference in circumstances of sale, the Secretary normally will consider the cost of such difference to the producer or reseller but, if appropriate, may also consider the effect of such difference on the market value of the merchandise.

§ 353.57 Differences in physical characteristics.

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

(b) Reasonable allowance. In deciding what is a reasonable allowance for any difference in physical characteristics, the Secretary normally will consider differences in the cost of production but, where appropriate, may also consider differences in the market value. The Secretary will not consider differences.
in cost of production when compared merchandise has identical physical characteristics.

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

§ 353.59 Disregarding insignificant adjustments; use of averaging and sampling. (a) Insignificant adjustments. The Secretary may disregard adjustments to foreign market value which are insignificant. Ordinarily, the Secretary will disregard individual adjustments having an ad valorem effect of less than 0.33 percent, or any group of adjustments having an ad valorem effect of less than 1.0 percent, of the foreign market value. Groups of adjustments are differences in circumstances of sale, differences in the physical characteristics of the merchandise, and differences in the levels of trade. (b) Averaging or sampling. (1) In calculating United States price or foreign market value, the Secretary may use averaging or generally recognized sampling techniques whenever a significant volume of sales or number of adjustments are involved. (2) The Secretary will select the appropriate representative samples.

§ 353.60 Conversion of currency. (a) Rule for conversion. The Secretary will convert, under section 522 of the Act (31 U.S.C. 5151(c)), a foreign currency into the equivalent amount of United States currency at the rates in effect on the dates described in § 353.46, 353.49, or 353.50, as appropriate. (b) Special rules for investigations. For purposes of investigations, producers, resellers, and importers will be expected to act within a reasonable period of time to take into account price differences resulting from sustained changes in prevailing exchange rates. When the price of the merchandise is affected by temporary exchange rate fluctuations, the Secretary will not take into account in fair value comparisons any difference between United States price and foreign market value resulting solely from such exchange rate fluctuation.

ANNEX I—Time Limits for Submissions Specified in This Part

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* Documents are filed when stamped by the Central Record Unit of the Department of Commerce. See § 353.31(d) for hours of operation.