In accordance with Article 19:5(b) of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, I have the honour to inform you of the recent changes in the United States law and regulations relevant to the Agreement.

In this regard, I am transmitting for the information of the Committee a copy of Title I of the Trade Agreements Act of 1979 (except for that section that deals with the imposition of anti-dumping duties), which is the new law in the United States covering the imposition of countervailing duties; a copy of 19 CFR Part 355, which are the regulations promulgated by the Department of Commerce relating to its responsibilities for administering Title I; and a copy of 19 CFR Parts 201 and 207, which are the regulations promulgated by the United States International Trade Commission relating to its responsibilities for conducting injury investigations as provided for in Title I.
TITLE I—COUNTERVAILING AND ANTIDUMPING DUTIES

§ 101. ADDITION OF NEW COUNTERVAILING AND ANTIDUMPING DUTIES TITLE TO TARIFF ACT OF 1930.

The Tariff Act of 1930 is amended by adding at the end thereof the following new title:

"TITLE VII—COUNTERVAILING AND ANTIDUMPING DUTIES

"Subtitle A—Imposition of Countervailing Duties

"Sec. 701. Countervailing duties imposed.
"Sec. 702. Procedures for initiating a countervailing duty investigation.
"Sec. 703. Preliminary determinations.
"Sec. 704. Termination or suspension of investigation.
"Sec. 705. Final determinations.
"Sec. 706. Assessment of duty.
"Sec. 707. Treatment of difference between deposit of estimated countervailing duty and final assessed duty under countervailing duty order.

"Subtitle B—Imposition of Antidumping Duties

"Sec. 731. Antidumping duties imposed.
"Sec. 732. Procedures for initiating an antidumping duty investigation.
"Sec. 733. Preliminary determinations.
"Sec. 734. Termination or suspension of investigation.
"Sec. 735. Final determinations.
"Sec. 736. Assessment of duty.
"Sec. 737. Treatment of difference between deposit of estimated antidumping duty and final assessed duty under antidumping duty order.
"Sec. 738. Conditional payment of antidumping duty.
"Sec. 739. Duties of customs officers.
"Sec. 740. Antidumping duty treated as regular duty for drawback purposes.

"Subtitle C—Review of Determinations

"Sec. 751. Administrative review of determinations.

"Subtitle D—General Provisions

"Sec. 771. Definitions; special rules.
"Sec. 772. United States price.
"Sec. 773. Foreign market value.
"Sec. 774. Hearings.
"Sec. 775. Subsidy practices discovered during an investigation.
"Sec. 776. Verification of information.
"Sec. 777. Access to information.
"Sec. 778. Interest on certain overpayments and underpayments.

"Subtitle A—Imposition of Countervailing Duties

"Sec. 701. COUNTERVAILING DUTIES IMPOSED.

"(a) GENERAL RULE.—If—

"(1) the administering authority determines that—

"(A) a country under the Agreement, or

"(B) a person who is a citizen or national of such a country, or a corporation, association, or other organization organized in such a country,

is providing, directly or indirectly, a subsidy with respect to the manufacture, production, or exportation of a class or kind of merchandise imported into the United States, and

"(2) the Commission determines that—

"(A) an industry in the United States—

"(i) is materially injured, or

"(ii) is threatened with material injury, or

"(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise,

then there shall be imposed upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net subsidy.

"(b) COUNTRY UNDER THE AGREEMENT.—For purposes of this subtitle, the term 'country under the Agreement' means a country—

"(1) between the United States and which the Agreement on Subsidies and Countervailing Measures applies, as determined under section 2(b) of the Trade Agreements Act of 1979,

"(2) which has assumed obligations with respect to the United States which are substantially equivalent to obligations under the Agreement, as determined by the President, or

"(3) with respect to which the President determines that—

"(A) there is an agreement in effect between the United States and that country which—

"(i) was in force on June 19, 1979, and

"(ii) requires unconditional most-favored-nation treatment with respect to articles imported into the United States,

"(B) the General Agreement on Tariffs and Trade does not apply between the United States and that country, and

"(C) the agreement described in subparagraph (A) does not expressly permit—

"(i) actions required or permitted by the General Agreement on Tariffs and Trade, or required by the Congress, or

"(ii) nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices.

"(c) CROSS REFERENCE.—

"For provisions of law applicable in the case of merchandise which is the product of a country other than a country under the Agreement, see section 303 of this Act.

"Sec. 702. PROCEDURES FOR INITIATING A COUNTERVAILING DUTY INVESTIGATION.

"(a) INITIATION BY ADMINISTERING AUTHORITY.—A countervailing duty investigation shall be commenced whenever the administering authority determines, from information available to it, that a formal
19 USC 1671b. "SEC. 7U. PRELIMINARY DETERMINATIONS.

Post, p. 176. "Preliminary determination by the administering authority shall be commenced whenever an interested party described in subparagraph (C), (D), or (E) of section 771(0) files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 701(a), and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

"(2) SIMULTANEOUS FILING WITH COMMISSION.—The petitioner shall file a copy of the petition with the Commission on the same day it is filed with the administering authority.

"(c) PETITION DETERMINATION.—Within 20 days after the date on which a petition is filed under subsection (b), the administering authority shall—

"(1) determine whether the petition alleges the elements necessary for the imposition of a duty under section 701(a) and contains information reasonably available to the petitioner supporting the allegations,

"(2) if the determination is affirmative, commence an investigation to determine whether a subsidy is being provided with respect to the class or kind of merchandise described in the petition, and provide for the publication of notice of the determination to commence an investigation in the Federal Register, and

"(3) if the determination is negative, dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and provide for the publication of notice of the determination in the Federal Register.

"(d) NOTIFICATION TO COMMISSION OF DETERMINATION.—The administering authority shall—

"(1) notify the Commission immediately of any determination it makes under subsection (a) or (c), and

"(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

"SEC. 7U3. PRELIMINARY DETERMINATIONS.

"(a) Determination by Commission of Reasonable Indication of Injury.—Except in the case of a petition dismissed by the administering authority under section 702(c)(3), the Commission, within 45 days after the date on which a petition is filed under section 702(b) or on which it receives notice from the administering authority of an investigation commenced under section 702(a), shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable indication that—

"(1) an industry in the United States—

"(A) is materially injured, or

"(B) is threatened with material injury, or

"(2) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise which is the subject of the investigation by the administering authority. If that determination is negative, the investigation shall be terminated.

"(b) PRELIMINARY DETERMINATION.—Within 85 days after the date on which a petition is filed under section 702(b), or an investigation is commenced under section 702(a), but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that a subsidy is being provided with respect to the merchandise which is the subject of the investigation. If the determination of the administering authority under this subsection is affirmative, the determination shall include an estimate of the net subsidy.

"(c) EXTENSION OF PERIOD IN EXTRAORDINARILY COMPPLICATED CASES.—

"(1) In general.—If—

"(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b), or

"(B) the administering authority concludes that the parties concerned are cooperating and determines that—

"(i) the case is extraordinarily complicated by reason of—

"(I) the number and complexity of the alleged subsidy practices;

"(II) the novelty of the issues presented;

"(III), the need to determine the extent to which particular subsidies are used by individual manufacturers, producers, and exporters; or

"(IV) the number of firms whose activities must be investigated; and

"(ii) additional time is necessary to make the preliminary determination,

then the administering authority may postpone making the preliminary determination under subsection (b) until not later than the 150th day after the date on which a petition is filed under section 702(b), or an investigation is commenced under section 702(a).

"(2) NOTICE OF POSTPONEMENT.—The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b), if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement. Notice of the postponement shall be published in the Federal Register.

"(d) EFFECT OF DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority—

"(1) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register.
"(2) shall order the posting of a cash deposit, bond, or other security, as it deems appropriate, for each entry of the merchandise concerned equal to the estimated amount of the net subsidy, and

"(3) shall make available to the Commission all information upon which its determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

"(e) CRITICAL CIRCUMSTANCES DETERMINATIONS.—

"(1) IN GENERAL.—If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly determine, on the basis of the best information available to it at that time, whether there is a reasonable basis to believe or suspect that—

"(A) the alleged subsidy is inconsistent with the Agreement, and

"(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

"(2) SUSPENSION OF LIQUIDATION.—If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(1) shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered.

"(f) NOTICE OF DETERMINATIONS.—Whenever the Commission or the administering authority makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

"SEC. 701. TERMINATION OR SUSPENSION OF INVESTIGATION.

"(a) TERMINATION OF INVESTIGATION ON WITHDRAWAL OF PETITION.—An investigation under this subtitle may be terminated by either the administering authority or the Commission after notice to all parties to the investigation, upon withdrawal of the petition. The Commission may not terminate an investigation under the preceding sentence before a preliminary determination is made by the administering authority under section 703(b).

"(b) AGREEMENTS TO ELIMINATE OR OFFSET COMPLETELY A SUBSIDY OR TO CEASE EXPORTS OF SUBSIDIZED MERCHANDISE.—The administering authority may suspend an investigation if the government of the country in which the subsidy practice is alleged to exist agrees, or exporters who account for substantially all of the imports of the merchandise which is the subject of the investigation agrees—

"(1) to eliminate the subsidy completely or to offset completely the amount of the net subsidy, with respect to that merchandise exported directly or indirectly to the United States, within 6 months after the date on which the investigation is suspended or

"(2) to cease exports of that merchandise to the United States within 6 months after the date on which the investigation is suspended.

"(c) AGREEMENTS ELIMINATING INJURIOUS EFFECT.—

"(1) GENERAL RULE.—If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement from a government described in subsection (b), or from exporters described in subsection (b), if the agreement will eliminate completely the injurious effect of exports to the United States of the merchandise which is the subject of the investigation.

"(2) CERTAIN ADDITIONAL REQUIREMENTS.—Except in the case of an agreement by a foreign government to restrict the volume of imports of the merchandise which is the subject of the investigation into the United States, the administering authority may not accept an agreement under this subsection unless—

"(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

"(B) at least 85 percent of the net subsidy will be offset.

"(3) QUANTITATIVE RESTRICTIONS AGREEMENTS.—The administering authority may accept an agreement with a foreign government to restrict the volume of imports of the merchandise which is the subject of an investigation into the United States, but it may not accept such an agreement with exporters.

"(4) DEFINITION OF EXTRAORDINARY CIRCUMSTANCES.—

"(A) EXTRAORDINARY CIRCUMSTANCES.—For purposes of this section, the term 'extraordinary circumstances' means circumstances in which—

"(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

"(ii) the investigation is complex.

"(B) COMPLEX.—For purposes of this paragraph, the term 'complex' means—

"(i) there are a large number of alleged subsidy practices and the practices are complicated, or

"(ii) the issues raised are novel, or

"(iii) the number of exporters involved is large.

"(d) ADDITIONAL RULES AND CONDITIONS.—

"(1) PUBLIC INTEREST; MONITORING.—The administering authority shall not accept an agreement under subsection (b) or (c) unless—

"(A) it is satisfied that suspension of the investigation is in the public interest, and

"(B) effective monitoring of the agreement by the United States is practicable.

"(2) EXPORTS OF MERCHANDISE TO UNITED STATES NOT TO INCREASE DURING INTERIM PERIOD.—The administering authority may not accept any agreement under subsection (b) unless that agreement provides a means of ensuring that the quantity of the merchandise covered by that agreement exported to the United States during the period provided for elimination or offset of the subsidy or cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most
publication suspension of the investigation, and issue affirmative
Suspension "(A) it shall suspend the investigation, publish notice of
other parties to the investigation and the Commission not less
subsection (b) or (c), the administering
publish the notice of subsection
the administering authority shall—
"(e) SUSPENSION OF INVESTIGATION PROCEDURE.—Before an investi-
gation may be suspended under subsection (b) or (c) the administering
notify the petitioner of, and consult with the petitioner
at the time of the notification, together with an explanation of
agreement will be carried out and enforced (including any action required of foreign governments), and of how the
regulations governing the entry, or withdrawal from warehouse,
and information for the record before the date on which notice of
for consumption of merchandise covered by such agreement.
subsection (b) or (c), the administering
proposed agreement to the petitioner
the administering authority determines
to suspend an investigation upon acceptance of an agreement
declared in subsection (b) or (c), then—
provide a copy of the proposed agreement to the petitioner
subsection (b) and (d) or (c) and (d), and
permit all parties to the investigation to submit comments
subsection (f)(1)(A).
SUSPENSION OR INVESTIGATION.—
"(1) IN GENERAL.—If the administering authority determines
to suspend an investigation upon acceptance of an agreement
determined under section 703(b) with respect to
the subject of the investigation, unless it has previously issued such a determination in the
same investigation,
the Commission shall suspend any investigation it is
conducting with respect to that merchandise, and
the suspension of investigation shall take effect on the
day on which such notice is published.
"(2) LIQUIDATION OF ENTRIES.—
(A) CESSATION OF EXPORTS; COMPLETE ELIMINATION OF NET
suspension.—If the agreement accepted by the administering
authority is an agreement described in subsection (b) or (c), then—
"(i) it shall suspend the investigation, publish notice of
preliminary determination required under paragraph (1)(A), the
liquidations of entries of merchandise which is the subject of the investigation,
the liquidation of entries of such merchandise shall not be suspended under
section 703(d)(1); and
(ii) if the liquidation of entries of such merchandise
was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to
such merchandise, that suspension of liquidation shall terminate, and
the administering authority shall refund any
cash deposit and release any bond or other security
deposited under section 703(d)(1)." (B) OTHER AGREEMENTS.—If the agreement accepted by
the administering authority is an agreement described in
the investigation which is the subject of the investigation shall be sus-
pended under section 703(d)(1), or, if the liquidation of
such merchandise was suspended pursuant to a
previous affirmative preliminary determination in the same case, that
suspension of liquidation shall continue in effect, subject to subsection (h)(3), but the security required under
section 703(d)(2) may be adjusted to reflect the effect of the
agreement.
"(3) WHERE INVESTIGATION IS CONTINUED.—If, pursuant to
subsection (g), the administering authority and the Commission
continue an investigation in which an agreement has been
accepted under subsection (b) or (c), then—
"(A) if the final determination by the administering
authority or the Commission under section 705 is negative,
the agreement shall have no force or effect and the investi-
gation shall be terminated, or
"(B) if the final determinations by the administering
authority and the Commission under such section are
affirmative, the agreement shall remain in force, but the
administering authority shall not issue a countervailing
duty order in the case so long as—
"(i) the agreement remains in force,
"(ii) the agreement continues to meet the require-
ments of subsections (b) and (d), or (c) and (d), and
(ii) the parties to the agreement carry out their
obligations under the agreement in accordance with its
terms.
"(g) INVESTIGATION TO BE CONTINUED UPON REQUEST.—If the
administering authority, within 20 days after the date of publication
of the notice of suspension of an investigation, receives a request for
the continuation of the investigation
"(1) the government of the country in which the subsidy
practice is alleged to occur, or
"(2) an interested party described in subparagraph (C), (D), or
(E) of section 771(9) which is a party to the investigation,
then the administering authority and the Commission shall continue
the investigation.
"(h) REVIEW OF SUSPENSION.—
"(1) IN GENERAL.—Within 20 days after the suspension of an
investigation under subsection (c), an interested party which is a
party to the investigation and which is described in subpara-
graph (C), (D), or (E) of section 771(9) may, by petition filed with
the Commission and with notice to the administering authority,
ask for a review of the suspension.
"(2) COMMISSION INVESTIGATION.—Upon receipt of a review
petition under paragraph (1), the Commission shall, within 75
days after the date on which the petition is filed with it,
determine whether the injurious effect of imports of the
merchandise which is the subject of the investigation is eliminated
completely by the agreement. If the Commission's
determination under this subsection is negative, the investigation shall be
resumed on the date of publication of notice of such determina-
tion as if the affirmative preliminary determination under
section 703(b) had been made on that date.
"(3) SUSPENSION OF LIQUIDATION TO CONTINUE DURING REVIEW
PERIOD.—The suspension of liquidation of entries of the merchan-
dise which is the subject of the investigation shall terminate at
the close of the 20-day period beginning on the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of the affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

"(A) terminate the suspension of liquidation under section 703(d)(1), and

"(B) release any bond or other security, and refund any cash deposit, required under section 703(d)(2).

"(i) VIOLATION OF AGREEMENT.—

"(1) IN GENERAL.—If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall—

"(A) suspend liquidation under section 703(d)(1) of unliquidated entries of the merchandise made on or after the later of—

"(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

"(ii) the date of the merchandise, the sale or export to the United States of which, was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d) or (c) and (d), was first entered, or withdrawn from warehouse, for consumption,

"(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination under section 703(b) were made on the date of its determination under this paragraph,

"(C) if the investigation was completed under subsection (g), issue a countervailing duty order under section 706(a) effective with respect to entries of merchandise the liquidation of which was suspended, and

"(D) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

"(2) INTENTIONAL VIOLATION TO BE PUNISHED BY CIVIL PENALTY.—Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) shall be subject to a civil penalty assessed in the same manner, and under the same procedure, as the civil penalty imposed for a fraudulent violation of section 592(a) of this Act.

"(j) DETERMINATION NOT TO TAKE AGREEMENT INTO ACCOUNT.—In making a final determination under section 705, or in conducting a review under section 751, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(4), or continued an investigation under subsection (g), the Commission and the administering authority shall consider all of the merchandise which is the subject of the investigation, without regard to the effect of any agreement under subsection (b) or (c).
authority has made an affirmative determination under subsection (a) would have been found, but for any suspension of liquidation of entries of that merchandise.

"(c) Effect of Final Determinations.—

"(1) Effect of Affirmative Determination by the Administering Authority.—If the determination of the administering authority under subsection (a) is affirmative, then—

(A) the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority, and

(B) in cases where the preliminary determination by the administering authority under section 703(b) was negative, the administering authority shall order under paragraphs (1) and (2) of section 703(d) the suspension of liquidation and the posting of a cash deposit, bond, or other security.

"(2) Issuance of Order; Effect of Negative Determination.—If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue a countervailing duty order under section 706(a). If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liquidation under section 703(d)(1), and

(B) release any bond or other security and refund any cash deposit required under section 703(d)(2).

"(3) Effect of Negative Determinations under Subsections (a)(2) and (b)(1)(A).—If the determination of the administering authority or the Commission under subsection (a)(2) and (b)(1)(A), respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under section 703(e)(2), and

(B) release any bond or other security, and refund any cash deposit required, under section 703(d)(2) with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 703(e)(2).

"(4) Publication of Notice of Determinations.—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

"(5) Notice of Affirmative Determination of the Commission under Section 706(b).—If the determining authority has made an affirmative determination under subsection (a) and the administering authority has made an affirmative determination under section 705(b), the administering authority shall publish a countervailing duty order which—

"(1) directs customs officers to assess a countervailing duty equal to the amount of the net subsidy determined or estimated to exist, within 6 months after the date on which the administering authority receives satisfactory information upon which the assessment may be based, but in no event later than 12 months after the end of the annual accounting period of the manufacturer or exporter with which the merchandise is entered, or withdrawn from warehouse, for consumption,

"(2) includes a description of the class or kind of merchandise to which it applies, in such detail as the administering authority deems necessary, and

"(3) requires the deposit of estimated countervailing duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

"(b) Imposition of Duties.—

"(1) General Rule.—If the Commission, in its final determination under section 705(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 703(d)(1), would have led to a finding of material injury, then entries of the merchandise subject to the countervailing duty order, the liquidation of which has been suspended under section 703(d)(1), shall be subject to the imposition of countervailing duties under section 701(a).

"(2) Special Rule.—If the Commission, in its final determination under section 705(b), finds threat of material injury, other than threat of material injury described in paragraph (1), or material retardation of the establishment of an industry in the United States, then merchandise subject to a countervailing duty order which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of notice of an affirmative determination of the Commission under section 705(b) shall be subject to the imposition of countervailing duties under section 701(a), and the administering authority shall release any bond or other security, and refund any cash deposit made, to secure the payment of countervailing duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

"SEC. 707. TREATMENT OF DIFFERENCE BETWEEN DEPOSIT OF ESTIMATED COUNTERVAILING DUTY AND FINAL ASSESSED DUTY UNDER COUNTERVAILING DUTY ORDER.

"(a) Deposit of Estimated Countervailing Duty Under Section 703(d)(2).—If the amount of a cash deposit, or the amount of any bond or other security, required as security for an estimated countervailing duty under section 703(d)(2) is different from the amount of the countervailing duty determined under a countervailing duty order issued under section 706, then the difference for entries of merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of notice of the affirmative determination of the Commission under section 705(b) is published shall be—

"(1) disregarded, to the extent that the cash deposit, bond, or other security is lower than the duty under the order, or

"(2) refunded or released, to the extent that the cash deposit, bond, or other security is higher than the duty under the order.

"(b) Deposit of Estimated Countervailing Duty Under Section 706(a)(3).—If the amount of an estimated countervailing duty deposited under section 706(a)(3) is different from the amount of the
countervailing duty determined under a countervailing duty order issued under section 706, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative determination of the Commission under section 705(b) is published shall be—

"(1) collected, to the extent that the deposit under section 706(a)(3) is lower than the duty determined under the order, or

"(2) refunded, to the extent that the deposit under section 706(a)(3) is higher than the duty determined under the order, together with interest as provided by section 778.

Post, p. 188.
"Subtitle C—Review of Determinations"

"SEC. 751. ADMINISTRATIVE REVIEW OF DETERMINATIONS."

"(a) Periodic Review of Amount of Duty.—"

"(1) In General.—At least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order under this title or under section 303 of this Act, an antidumping duty order under this title or a finding under the Antidumping Act, 1921, or a notice of the suspension of an investigation, the administering authority, after publication of notice of such review in the Federal Register, shall—

"(A) review and determine the amount of any net subsidy,
"(B) review, and determine (in accordance with paragraph (2)), the amount of any antidumping duty, and
"(C) review the current status of, and compliance with, any agreement by reason of which an investigation was suspended, and review the amount of any net subsidy or margin of sales at less than fair value involved in the agreement,

and shall publish the results of such review, together with notice of any duty to be assessed, estimated duty to be deposited, or investigation to be resumed in the Federal Register.

"(2) Determination of Antidumping Duties.—For the purpose of paragraph (1)(B), the administering authority shall determine—

"(A) the foreign market value and United States price of each entry of merchandise subject to the antidumping duty order and included within that determination, and
"(B) the amount, if any, by which the foreign market value of each such entry exceeds the United States price of the entry.

The administering authority, without revealing confidential information, shall publish notice of the results of the determination of antidumping duties in the Federal Register, and that determination shall be the basis for the assessment of antidumping duties on entries of the merchandise included within the determination and for deposits of estimated duties.

"(b) Reviews Upon Information or Request.—"

"(1) In General.—Whenever the administering authority or the Commission receives information concerning, or a request for the review of, an agreement accepted under section 701 or 734 or an affirmative determination made under section 704(h)(2), 705(a), 705(b), 734(h)(2), 735(a), or 735(b), which shows changed circumstances sufficient to warrant a review of such determination, it shall conduct such a review after publishing notice of the review in the Federal Register. In reviewing its determination under section 704(h)(2) or 734(h)(2), the Commission shall consider whether, in the light of changed circumstances, an
agreement accepted under section 704(c) or 735(c) continues to eliminate completely the injurious effects of imports of that merchandise.

(2) LIMITATION ON PERIOD FOR REVIEW.—In the absence of good cause shown—

(A) the Commission may not review a determination under section 705(b) or 735(b), and

(B) the administering authority may not review a determination under section 705(a) or 735(a), or the suspension or revocation of a countervailing duty order or an antidumping duty order, unless the determination is appealed to the Commission, and the administering authority has received a determination by the Commission that the agreement had been violated on that date, except that no duty shall be assessed or revocable suspension or revocation shall apply for refund for any period after the date of publication of the determination or suspension.

(c) Revocation of Countervailing Duty Order or Antidumping Duty Order.—The administering authority may revoke, in whole or in part, a countervailing duty order or an antidumping duty order, determinate a suspended investigation, after review under this section. Any such revocation or termination shall apply with respect to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on and after a date determined by the administering authority.

(d) Hearings.—Whenever the administering authority or the Commission conducts a review under this section it shall, upon request of any interested party, hold a hearing in accordance with section 774(b) in connection with that review.

(e) Determination That Basis for Suspension No Longer Exists.—If the determination of the Commission under the last sentence of subsection (b)(1) is negative, the agreement shall be treated as not accepted, beginning on the date of the publication of the Commission's determination, and the administering authority and the Commission shall proceed, under section 704(i) or 734(i), as the agreement had been violated on that date, unless the date under any order subsequently issued shall be assessed on merchandise entered, or withdrawn from warehouse, for consumption before that date.

"Subtitle D—General Provisions

"SEC. 771. DEFINITIONS, SPECIAL RULES.

"For purposes of this title—

"(1) Administering Authority.—The term 'administering authority' means the Secretary of the Treasury, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under this title is transferred by law.


"(3) Country.—The term 'country' means a foreign country, political subdivision, dependent territory, or possession of a foreign country, and, except for the purpose of antidumping proceedings, may include an association of 2 or more foreign countries, political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States.

"(4) Industry.—

"(A) In general.—The term 'industry' means the domestic producers as a whole of a like product, or those producers whose collective output of a like product constitutes a major proportion of the total domestic production of that product.

"(B) Related parties.—When some producers are related to the exporters or importers, or are themselves importers of the allegedly subsidized or dumped merchandise, the term 'industry' may be applied in appropriate circumstances by excluding such producers from those included in that industry.

"(C) Regional industries.—In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were separate industries.

"(D) Product lines.—The effect of subsidized or dumped imports shall be assessed in relation to the United States production of a like product if available data permit the separate identification of production in terms of such criteria as the production process or the producer's profits. The domestic production of the like product has no separate identity in terms of such criteria, then the effect of the subsidized or dumped imports may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry.

"(E) COUNTRY.—The term 'country' may be applied in appropriate circumstances by excluding such producers from those included in that industry.

"(F) COMMISSION.—The term 'Commission' means the United States International Trade Commission.

"(G) ADMINISTERING AUTHORITY.—The term 'administering authority' means the Secretary of the Treasury, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under this title is transferred by law.

"(H) Industry.—

"(A) In general.—The term 'industry' means the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.
gros subsidy the amount of—

"(6) NET SUBSIDY.—For the purpose of determining the net subsidy, the administering authority may subtract from the gross subsidy the amount of—

(A) any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the subsidy,

(B) any loss in the value of the subsidy resulting from the deferred receipt, if the deferral is mandated by Government order, and

(C) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received.

(7) MATERIAL INJURY.—

(A) IN GENERAL.—The term ‘material injury’ means harm which is not inconsequential, immaterial, or unimportant.

(B) VOLUME AND CONSEQUENT IMPACT.—In making its determinations under sections 703(a), 705(b), 733(a), and 735(b), the Commission shall consider, among other factors—

(i) the volume of imports of the merchandise which is the subject of the investigation,

(ii) the effect of imports of that merchandise on prices in the United States for like products, and

(iii) the impact of imports of such merchandise or domestic producers of like products.

(C) EVALUATION OF VOLUME AND OF PRICE EFFECTS.—For purposes of subparagraph (B)—

(i) VOLUME.—In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, is significant relative to production or consumption in the United States.

(ii) PRICE.—In evaluating the effect of imports on prices, the Commission shall consider whether—

(I) there has been significant price undercutting by the imported merchandise compared with the price of like products in the United States, and

(II) factors affecting domestic prices, and

(iii) IMPACT ON AFFECTED INDUSTRY.—In examining the impact on the affected industry, the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to—

(I) actual and potential decline in output, sales, and market share, profits, productivity, return on investment, and utilization of capacity,

(II) factors affecting domestic prices, and

(III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment.

(D) SPECIAL RULES FOR AGRICULTURAL PRODUCTS.—

(8) AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES; AGREEMENT.—The terms ‘Agreement on Subsidies and Countervailing Measures’ and ‘Agreement’ mean the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures) approved under section 2(a) of the Trade Agreements Act of 1979.

(9) INTERESTED PARTY.—The term ‘interested party’ means—

(A) a foreign manufacturer, producer, or exporter, or the United States importer, of merchandise which is the subject of an investigation under this title or a trade or business association a majority of the members of which are importers of such merchandise,

(B) the government of a country in which such merchandise is produced or manufactured,

(C) a manufacturer, producer, or wholesaler in the United States of a like product,

(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product, and

(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

(10) LIKE PRODUCT.—The term ‘like product’ means a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.

(11) AFFIRMATIVE DETERMINATIONS BY DIVIDED COMMISSION.—

If the Commissioners voting on a determination by the Commission are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph when the issue before the Commission is to determine whether there is—

(A) material injury to an industry in the United States,
The term 'sold or, in the absence of sales, offered for sale' means the price at which merchandise is purchased, without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.

Ordinary course of trade. The term 'ordinary course of trade' means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise which is the subject of an investigation, have been normal in the trade under consideration with respect to merchandise of the same kind or class.

Such or similar merchandise. The term 'such or similar merchandise' means merchandise in the first of the following categories in respect of which a determination for the purposes of subtitle B of this title can be satisfied:

(A) The merchandise which is the subject of an investigation and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.

(B) Merchandise—

(i) produced in the same country and by the same person as the merchandise which is the subject of the investigation,

(ii) like that merchandise in component material or materials and in the purposes for which used, and

(iii) approximately equal in commercial value to that merchandise.

(C) Merchandise—

(i) produced in the same country and by the same person and the same general class or kind as the merchandise which is the subject of the investigation,

(ii) like that merchandise in the purposes for which used, and

(iii) which the administering authority determines may reasonably be compared with that merchandise.

(17) Usual wholesale quantities. The term 'usual wholesale quantities', in any case in which the merchandise which is the subject of the investigation is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for any quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

SEC. 772. UNITED STATES PRICE.

(a) United States Price. For purposes of this title, the term 'United States price' means the purchase price, or the exporter's sales price, of the merchandise, whichever is appropriate.

(b) Purchase Price. For purposes of this section, the term 'purchase price' means the price at which merchandise is purchased, or agreed to be purchased, prior to the date of importation, from the manufacturer or producer of the merchandise for exportation to the United States. Appropriate adjustments for costs and expenses under subsection (d) shall be made if they are not reflected in the price paid by the person by whom, or for whose account, the merchandise is imported.

(c) Exporter's Sales Price. For purposes of this section, the term 'exporter's sales price' means the price at which merchandise is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, as adjusted under subsections (d) and (e).

(d) Adjustments to Purchase Price and Exporter's Sales Price. The purchase price and the exporter's sales price shall be adjusted by being—

(i) increased by—

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

(B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States;
The text is a legal document comprising a section of United States Code provisions regulating foreign market value. It details methodologies for determining foreign market value in situations where domestic sale prices are not available or are manipulated. Key points include:

- **Determination of Foreign Market Value:**
  - **Section 773. Foreign Market Value**
  - **Determination:** The price at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the United States, is considered.
  - **Fictitious Market:** Sales must be fair and genuine, negotiated in the ordinary course of trade.

- **Adjustments:**
  - Expenses generally incurred by or for the account of the exporter, charges at the place of shipment, and market value adjustments.
  - Sales at less than cost of production, indirect sales, and other adjustments.

- **Use of Constructed Value:**
  - When direct sales are not available, constructed values based on comparable sales are used.

- **Indirect Sales and Offers for Sale:**
  - Sales or offers for sale through sales agencies or other organizations.

- **Administrative Authority:**
  - Decisions on foreign market value are made by the administering authority.

The document is a comprehensive guide for determining foreign market value for purposes of international trade, ensuring fair values for both exporting and importing countries.
been made at less than the cost of production and the remaining
sales, made at not less than cost of production, are determined to be
inadequate as a basis for the determination of foreign market value.

"(c) STATE-CONTROLLED ECONOMIES.—If available information indi-
cates to the administering authority that the economy of the country
from which the merchandise is exported is State-controlled to an
extent that sales or offers of sales of such or similar merchandise is
that country or to countries other than the United States, the author-
ity shall determine its price at the time of exportation from
the country outside of the country of exportation, the administering
authority shall determine the foreign market value of the merchandise on the basis of the normal
costs, expenses, and profits as reflected by either—

"(1) the prices, determined in accordance with subsection (a) of
this section, at which such or similar merchandise of a non-State-
controlled-economy country or countries is sold either—

"(A) for consumption in the home market of that country
or countries, or

"(B) to other countries, including the United States; or

"(2) the constructed value of such or similar merchandise in a
non-State-controlled-economy country or countries as deter-

"(d) SPECIAL RULE FOR CERTAIN MULTINATIONAL CORPORATIONS.—
Whenever, in the course of an investigation under this title, the
administering authority determines that—

"(1) merchandise exported to the United States is being pro-
duced in facilities which are owned or controlled, directly or
indirectly, by a person, firm or corporation which also owns or
controls, directly or indirectly, other facilities for the production
of such or similar merchandise which are located in another
country or countries, or

"(2) the sales of such or similar merchandise by the company
concerned in the home market of the exporting country are
nonexistent or inadequate as a basis for comparison with the
sales of the merchandise to the United States; and

"(3) the foreign market value of such or similar merchandise
produced in one or more of the facilities outside the country of
exportation, if such differences are demonstrated to its
satisfaction. For the purposes of this subsection, in determining
foreign market value of such or similar merchandise produced in a
country outside the country of exportation, the administering
authority shall determine its price at the time of exportation from
the country of exportation and shall make any adjustments required
by subsection (a) of this section for the cost of all containers and
coverings and all other costs, charges, and expenses incident to
placing the merchandise in condition packed ready for shipment to
the United States by reference to such costs in the country of
exportation.

"(e) CONSTRUCTED VALUE.—For the purposes of this title, the con-
structed value of imported merchandise shall be the sum of—

"(1) DETERMINATION.—For the purposes of this title, the con-
structed value of imported merchandise shall be the sum of—

"(A) the cost of materials (exclusive of any internal tax
applicable in the country of exportation directly to such
materials or their disposition, but remitted or refunded
upon the exportation of the article or articles of which such
materials are used) and of fabrication or other processing
of any kind employed in producing such or similar mer-
chandise, at a time preceding the date of exportation of the
merchandise under consideration which would ordinarily
permit the production of that particular merchandise in the
country under consideration;

"(B) an amount for general expenses and profit equal to
that usually reflected in sales of merchandise of the same
general class or kind as the merchandise under considera-
tion which are made by producers in the country of exporta-
tion, in the usual wholesale quantities and in the ordinary
course of trade, except that—

"(i) the amount for general expenses shall not be less
than 10 percent of the cost as defined in subparagraph
(A), and

"(ii) the amount for profit shall not be less than 8
percent of the sum of such general expenses and cost; and

"(C) the cost of all containers and coverings of whatever
nature, and all other expenses incidental to placing
the merchandise under consideration in condition, packed ready
for shipment to the United States.

"(2) TRANSACTIONS DISREGARDED; BEST EVIDENCE.—For the pur-
poses of this subsection, a transaction directly or indirectly
between persons specified in any one of the subparagraphs in
paragraph (3) of this subsection may be disregarded if, in the case
of an amount of value required to be considered, the amount
determining that element does not fairly reflect the amount
usually reflected in sales in the market under consideration of
merchandise under consideration. If a transaction is disregarded
under the preceding sentence and there are no other transac-
tions available for consideration, then the determination of the
amount required to be considered shall be based on the best
evidence available as to what the amount would have been if the
transaction had occurred between persons not specified in any
one of the subparagraphs in paragraph (3) of this subsection.

"(3) RELATED PARTIES.—The persons referred to in paragraph
(2) of this section are:

"(A) Members of a family, including brothers and sisters
(whether by the whole or half blood), spouse, ancestors, and
lineal descendants.

"(B) Any officer or director of an organization and such
organization.

"(C) Parents.

"(D) Employer and employee.

"(E) Any person directly or indirectly owning, controlling,
holding 1 percent or more of the
outstanding voting stock or shares of any organization and such organization.

"(F) Two or more persons directly or indirectly controlling a timely manner and in the form required, or otherwise significantly impeded an investigation, use the best information otherwise available.

"(1) use averaging or generally recognized sampling techniques whenever a significant volume of sales is involved or a significant number of adjustments to prices is required, and

"(2) decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise involved.

"SEC. 776. VERIFICATION OF INFORMATION.

("a) INFORMATION GENERALLY MADE AVAILABLE.—

"(1) PUBLIC INFORMATION FUNCTION.—There shall be established a library of information relating to foreign subsidy practices and countervailing measures. Copies of material in the library shall be made available to the public upon payment of the costs of preparing such copies.

"(2) PROGRESS OF INVESTIGATION REPORTS.—The administering authority and the Commission shall, from time to time upon request, inform the parties to an investigation of the progress of that investigation.

"(3) EX PARTE MEETINGS.—The administering authority and the Commission shall maintain a record of ex parte meetings between—

"(A) interested parties or other persons providing factual information in connection with an investigation, and

"(B) the person charged with making the determination, and the person charged with making a final recommendation to that person, in connection with that investigation.

The record of the ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the meeting shall be included in the record of the proceeding.

"(4) SUMMARIES; NONCONFIDENTIAL SUBMISSIONS.—The administering authority and the Commission may disclose—

"(A) any confidential information received in the course of a proceeding if it is disclosed in a form which cannot be associated with, or otherwise be used to identify, operations of a particular person, and

"(B) any information submitted in connection with a proceeding which is not designated as confidential by the person submitting it.

"b) CONFIDENTIAL INFORMATION.

"(1) CONFIDENTIALITY MAINTAINED.—Except as provided in subsection (a)(4)(A) and subsection (c), information submitted to the administering authority or the Commission which is designated as confidential by the person submitting it shall not be disclosed to any person other than an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted without the consent of the person submitting it. The administering authority and the Commission may require that information for which confidential treatment is requested be accompanied by a non-confidential summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or a statement that the information is not susceptible to summary, accompanied by a statement of the reasons in support of the contention.

"(2) UNWARRANTED DESIGNATION.—If the administering authority or the Commission determines, on the basis of the nature and extent of the information or its availability from public sources, that designation of any information as confidential is unwarranted, the administering authority or the Commission shall report the methods and procedures used to verify such information. If the administering authority is unable to verify the accuracy of the information submitted, it shall use the best information available to it as the basis for its determination, which may include the information submitted in support of the petition.

"(b) Determinations To Be Made on Best Information Available.—In making their determinations under this title, the administering authority and the Commission shall, whenever a party or any other person refuses to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, use the best information otherwise available.
or withdraws the designation, the administering authority or the Commission, as the case may be, shall return it to the party submitting it.

(c) LIMITED DISCLOSURE OF CERTAIN CONFIDENTIAL INFORMATION UNDER PROTECTIVE ORDER.—

"(1) Disclosure by administering authority or Commission.—

"(A) In general.—Upon receipt of an application, which describes with particularity the information requested and sets forth the reasons for the request, the administering authority and the Commission may make confidential information submitted by any other party to the investigation available under a protective order described in sub paragraph (B).

"(B) Protective order.—The protective order under which information is made available shall contain such requirements as the administering authority or the Commission deem to be appropriate.

"(2) Disclosure under court order.—If the administering authority denies a request for information submitted by the petitioner or an interested party in support of the petition concerning the domestic price or cost of production of the like product, then application may be made to the United States Customs Court for an order directing the administering authority or the Commission to make the information available after notification of all parties to the investigation.

"(B) Rate.—The rate at which such interest is payable shall be 8 percent per annum, or, if higher, the rate in effect under section 6621 of the Internal Revenue Code of 1954 on the date on which the rate or amount of the duty is finally determined.

SEC. 102. PENDING INVESTIGATIONS.

(a) Pending investigations of bounties or grants.—If, on the effective date of the application of title VII of the Tariff Act of 1930 to imports from a country, there is an investigation in progress under section 303 of that Act as to whether a bounty or grant is being paid or bestowed on imports from such country, then:

(1) If the Secretary of the Treasury has not yet made a preliminary determination under section 303 of that Act as to whether a bounty or grant is being paid or bestowed, he shall terminate the investigation under section 303 and the matter previously under investigation shall be subject to this title if the affirmative determination called for in section 702 of that Act were made with respect to that matter on the effective date of the application of title VII of that Act to such country.

(2) If the Secretary has made a preliminary determination under section 303, but not a final determination, as to whether a bounty or grant is being paid or bestowed, he shall terminate the investigation under section 303 and the matter previously under investigation shall be subject to the provisions of title VII of that Act as if the preliminary determination under section 303 were a preliminary determination under section 703 of that title made on the effective date of the application of title VII of that Act to such country.

(b) Pending investigations of less-than-fair-value sales.—If, on the effective date of title VII of the Tariff Act of 1930, there is an investigation in progress under the Antidumping Act, 1921, as to whether imports from a country are being, or are likely to be, sold in the United States or elsewhere at less than fair value, then:

(1) If the Secretary has not yet made a preliminary determination under the Antidumping Act, 1921, as to the question of less-than-fair-value sales, he shall terminate the investigation and the United States International Trade Commission shall terminate any investigation under section 201(c)(2) of the Antidumping Act, 1921, and the matter previously under investigation shall be subject to the provisions of title VII of the Tariff Act of 1930 as if the affirmative determination called for in section 732 were made with respect to such matter on the effective date of title VII of the Tariff Act of 1930.

(2) If the Secretary has made the Antidumping Act, 1921, a preliminary determination, but not a final determination, that imports from such country are being or are likely to be sold in the United States or elsewhere at less than fair value, the investigation shall be terminated and the matter previously under investigation shall be subject to the provisions of title VII of the Tariff Act of 1930 as if the preliminary determination under the Antidumping Act, 1921, were a preliminary determination under section 733 of that title made on the effective date of title VII of the Tariff Act of 1930.

(c) Pending investigations of injury.—If, on the effective date of the application of title VII of the Tariff Act of 1930 to imports from a country, the United States International Trade Commission is conducting an investigation under section 303 of the Tariff Act of 1930 or section 201(a) of the Antidumping Act, 1921, as to whether an...
industry in the United States is being - is likely to be injured, or is prevented from being established, it shall terminate any such investigation and initiate an investigation, under subtitle A or B of title VI of the Tariff Act of 1930, which shall be completed within 75 days and-

(1) treat any final determination of the Secretary of the Tariff Act under section 303 as a final determination under section 705(a) of the Tariff Act of 1930 and consider the net amount of the bounty or grant estimated or determined under section 303 as the net subsidy amount under subtitle A of the Act; and

(2) treat any final determination of the Secretary of the Tariff Act under the Antidumping Act, 1921, as a final determination under section 735(a) of the Tariff Act of 1930.

SEC. 103. AMENDMENT OF SECTION 303 OF THE TARIFF ACT OF 1930.

(a) Application of Section 303.—Paragraph (1) of section 303(a) of the Tariff Act of 1930 (19 U.S.C. 1303(a)) is amended—

(1) by striking out “Whenever” and inserting in lieu thereof the following: “Except as the case of an article or merchandise which is the product of a country under the Agreement (within the meaning of section 701(b) of this Act), whenever;”

(b) Certain Provisions of New Law to Apply.—Section 303 of such Act (19 U.S.C. 1303) is amended—

(1) by striking out paragraphs (3) through (6) of subsection (a) and

(2) by striking out subsections (b) and (c) and inserting in lieu thereof the following new subsection:

“(b) The duty imposed under subsection (a) shall be imposed under regulations prescribed by the administering authority (as defined in section 771(c)), in accordance with title VII of this Act (relating to the imposition of countervailing duties) except that, in the case of an article or merchandise which is the product of a country under the Agreement (within the meaning of section 701(b) of this Act), whenever;”

SEC. 104. TRANSITION RULES FOR COUNTERVAILING DUTY ORDERS.

(a) Waived Countervailing Duty Orders.—

(1) Notification of Commission.—The administering authority shall notify the United States International Trade Commission by January 1, 1980, of any countervailing duty order in effect on January 1, 1980—

(A) for which the Secretary of the Treasury has waived the imposition of countervailing duties under section 303(d) of the Tariff Act of 1930 (19 U.S.C. 1303(d)), and

(B) which applies to merchandise other than quota cheese (as defined in section 701(c)(1) of this Act), which is a product of a country under the Agreement,

(B) published on or after the date of the enactment of this Act, and before January 1, 1980, with respect to products of a country under the Agreement (as defined in section 701(b) of the Tariff Act of 1930), and

(C) applicable to frozen, boneless beef from the European Communities under Treasury Decision 76-109, and shall furnish to the Commission the most current information it has with respect to the net subsidy benefitting the merchandise subject to the countervailing duty order.

(2) Determination by the Commission.—Within 180 days after the date on which it receives the information from the administering authority under paragraph (1), the Commission shall make a determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded, by reason of imports of the merchandise subject to the order.

(3) Effect of Determination.—

(A) Affirmative Determination.—Upon being notified by the Commission of an affirmative determination under paragraph (2), the administering authority shall terminate the waiver of imposition of countervailing duties for merchandise subject to the order, if any. The countervailing duty order under section 303 of the Tariff Act of 1930 which applies to that merchandise shall remain in effect until revoked, in whole or in part, under section 751(d) of such Act.

(B) Negative Determination.—Upon being notified by the Commission of a negative determination under paragraph (2), the administering authority shall revoke the countervailing duty order, and publish notice in the Federal Register of the revocation.

(b) Other Countervailing Duty Orders.—

(1) Review by Commission Upon Request.—In the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303)—

(A) which is not a countervailing duty order to which subsection (a) applies,

(B) which applies to merchandise which is the product of a country under the Agreement, and

(C) which is in effect on January 1, 1980, or which is issued pursuant to court order in an action brought under section 516(d) of that Act before that date, the Commission, upon the request of the government of such a country or of exporters accounting for a significant proportion of exports to the United States of merchandise which is covered by the order, submitted within 3 years after the effective date of
title VII of the Tariff Act of 1930 shall make a determination under paragraph (2) of this subsection.

(2) Determination by the Commission.—In a case described in paragraph (1) with respect to which it has received a request for review, the Commission shall commence an investigation to determine whether—

(A) an industry in the United States—
   (i) would be materially injured, or
   (ii) would be threatened with material injury, or

(B) the establishment of an industry in the United States would be materially retarded, by reason of imports of the merchandise covered by the countervailing duty order if the order were to be revoked.

(3) Suspension of liquidation; investigation time limits.—Whenever the Commission receives a request under paragraph (1), it shall promptly notify the administering authority and the administering authority shall suspend liquidation of entries of the affected merchandise made on or after the date of receipt of the Commission's notification, or in the case of butter from Australia, entries of merchandise subject to the assessment of countervailing duties under Treasury Decision 42397, as amended, and collect estimated countervailing duties pending the determination of the Commission. The Commission shall issue its determination in any investigation under this subsection not later than 3 years after the date of commencement of such investigation.

(4) Effect of determination.—

(A) Affirmative Determination.—Upon being notified of an affirmative determination under paragraph (2) by the Commission, the administering authority shall liquidate entries of merchandise the liquidation of which was suspended under paragraph (3) of this subsection and impose countervailing duties in the amount of the estimated duties required to be deposited. The countervailing duty order shall remain in effect until revoked, in whole or in part, under section 751(c) of the Tariff Act of 1930.

(B) Negative Determination.—Upon being notified of a negative determination under paragraph (2) by the Commission, the administering authority shall revoke the countervailing duty order then in effect, publish notice thereof in the Federal Register, and refund, without payment of interest, any estimated countervailing duties collected during the period of suspension of liquidation.

(c) All Outstanding Countervailing Duty Orders.—Subject to the provisions of subsections (a) and (b), any countervailing duty order issued under section 303 of the Tariff Act of 1930 which is—

(1) in effect on the effective date of title VII of the Tariff Act of 1930 (as added by section 101 of this Act), or

(2) issued pursuant to court order in a proceeding brought before that date under section 303 of the Tariff Act of 1930, shall remain in effect after that date and shall be subject to review under section 751 of the Tariff Act of 1930.

(d) Publication of Notice of Determination.—Whenever the Commission makes a determination under subsection (a) or (b), it shall publish notice of that determination in the Federal Register and notify the administering authority of its determination.

(e) Definitions.—Whenever any term which is defined in section 771 of the Tariff Act of 1930 is used in this section, it has the same meaning as when it is used in title VII of that Act.

SEC. 105. Continuation of Certain Waivers.

(a) Waivers.—Subparagraph (b) of section 303(d)(4) of the Tariff Act of 1930 (19 U.S.C. 1303(d)(4)) is amended by inserting after "(B) Any determination made by the Secretary under this subsection with respect to the establishment of an industry in the United States as of that date." the following:"

"(B) Any determination made by the Secretary under this subsection with respect to the establishment of an industry in the United States as of that date, would, as determined by the President, be a country under the Agreement (within the meaning of section 701(b) of such Act), which is in effect on September 29, 1979, or on the day before the date of the enactment of the Trade Agreements Act of 1979 (whichever of such dates first occurs), shall remain in effect until whichever of the following dates first occurs:"

"(i) The date on which the United States International Trade Commission makes a determination under section 104 of the Trade Agreements Act of 1979."

"(ii) The date such determination is revoked under paragraph (3)."

"(iii) The date of adoption of a resolution of disapproval of such determination under subsection (e)(2)."

(b) Effective Date.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

SEC. 106. Conforming Changes.

(a) Repeal of Old Law.—The Antidumping Act, 1921 (19 U.S.C. 160 et seq.) is hereby repealed but findings in effect on the effective date of this Act, or issued pursuant to court order in an action brought before that date, shall remain in effect, subject to review under section 751 of the Tariff Act of 1930.

(b) Conforming Amendments.—

(1) Section 337(b)(3) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(3)) is amended by striking out "the Antidumping Act, 1921" and inserting in lieu thereof "subtitle B of title VII of the Tariff Act of 1930".


(3) Section 201(b)(6) of the Trade Act of 1974 (19 U.S.C. 2251(b)(6)) is amended by striking out "the Antidumping Act, 1921, section 303 or 337" and inserting in lieu thereof "subtitles A and B of title VII or section 337".

SEC. 107. Effective Date.

Except as otherwise provided in this title, this title and the amendments made by it shall take effect on January 1, 1980, if—

(1) the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures), and

(2) the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures),

approved by the Congress under section 2(a) of this Act have entered into force with respect to the United States as of that date.
Part III

International Trade Commission

Procedures for Conduct of Investigations of Whether Injury to Domestic Industries Results From Imports Sold at Less Than Fair Value or From Subsidized Exports to the United States
INTERNATIONAL TRADE COMMISSION

19 CFR Parts 201 and 207

Procedures for the Conduct of Investigations of Whether Injury to Domestic Industries Results From Imports Sold at Less Than Fair Value or From Subsidized Exports to the United States


ACTION: Final rules.


EFFECTIVE DATE January 1, 1980.


SUPPLEMENTARY INFORMATION: An analysis of public comments on the proposed rules follows.

Introduction

On October 15, 1979, a Notice of Proposed Rulemaking was published in the Federal Register (44 FR 59392) proposing to add a new Part 207 to title 19, chapter II, of the Code of Federal Regulations and to delete the present part 207. Notice was given that comments concerning the proposed rulemaking were to be submitted on or before November 29, 1979. Submissions from approximately 20 interested persons and organizations were received by December 3, 1979. The submissions covered all of the areas addressed in the proposed rules, with the exception of judicial review. Many of the ideas contained in the comments have been accepted by the Commission and incorporated in its final rules; other suggestions were not adopted. The following is a summary of the proposals made in the comments received by the Commission with an explanation of why certain proposed amendments were or were not adopted. This summary has been organized in accordance with the principal subparts of the proposed rules.

Subpart A

Two comments were directed at the failure of the proposed rules to explain clearly that an injury determination will not be required in countervailing duty cases with respect to dutiable merchandise imported from a nation which is not a "country under the Agreement." The explanatory materials on § 207.1 have been clarified to make it explicit that a determination of injury pursuant to title VII of the Act is not required with respect to dutiable merchandise imported from a nation which is not a "country under the Agreement."

One comment noted that the definition of "ex parte meeting" § 207.2(f) was limited to communications of factual information between parties and Commissioners and certain staff, whereas section 777(3) of the Act covers "interested parties or other persons." We agree that the proposed rule was narrower than the law required and have made an appropriate change in the final rule. The same comment also suggested that "arguments," in addition to "factual information," be made subject to the rules of evidence. This change, however, is not required by the statute and has not been incorporated in the final rule.

Another major area of comments in this subpart concerned protective orders. The release of confidential information to attorneys or other representatives of interested parties in countervailing duty and antidumping investigations. Several comments suggested that the access to confidential information by representatives other than attorneys will not be adequately administrable by the Commission because strong sanctions are not available in the event of a breach of the protective order by representatives other than attorneys. It was also suggested that in-house counsel be excepted from the terms of the protective order, since access by in-house counsel to confidential information would have a chilling effect on submitters of sensitive information. The proposed rules have been amended accordingly so that only independent attorneys, and not in-house counsel, economists, or other professionals, will have access to confidential information under protective order. The only exception to this rule is that independent, nonlegal professionals who have signed a protective order will have access to such information if they are working for an attorney who has also signed a protective order. Thus, the attorney will also be responsible for any breach by the professionals working for him.

Other comments on the protective order provision were directed at the Commission's proposal for the automatic release under protective order upon application by interested parties who are parties to the proceeding of domestic price and cost of production information submitted by the petitioner or an interested party in support of the petitioner. Some comments stated that this release was too automatic and that the Commission should incorporate a standard of need for the information to be satisfied by the requesting interested party. On the other hand, some comments suggested that the proposed protective order provision was too narrow and did not take full advantage of the statutory authorization for the Commission to release all confidential information under protective order. In responding to these comments, the Commission has decided to add a standard of need similar to that incorporated in rule 26 of the Federal Rules of Civil Procedure. Before the Secretary releases domestic price and cost of production information to an interested party, an interested party must demonstrate a substantial need for the information in the prosecution of his case and that he is unable without undue hardship to obtain the substantial equivalent of the information by other means.

In the past, the Commission has not released any confidential information under protective order in antidumping and countervailing duty investigations and has found this practice to be very helpful in obtaining sensitive data quickly in order to fulfill its statutory mandate of determining within a short time whether there is injury to U.S. industries. Accordingly, the final rule has been amended to permit the disclosure to interested parties who are parties to the proceeding of confidential information other than domestic price and cost of production only when all such interested parties agree to such disclosure. This does not exercise the full range of the Commission's authority to release confidential information.
dealing with data other than domestic price or cost of production. It is conceivable, however, that, after the Commission has accumulated administrative experience with these protective order requests, it may modify its rules to allow greater access to such information. It would be unwise for the Commission, in the absence of such experience, to reverse its long-standing practice.

A final comment on subpart A contended that the Commission erred in proposing language in § 207.9 which requires a tie vote to be construed as affirmative in every determination under title VII of the Tariff Act. This comment also criticized the second sentence in § 207.9, which requires an affirmative vote on any theory of injury to be construed as affirmative when tallying the votes of Commissioners. The Commission believes that § 207.9 correctly reflects section 771(11) of the Act; thus, no changes have been made.

Subpart B

Several comments were received concerning the timing of notices and submissions in preliminary determination investigations. The proposed rules envisaged a 20-day period between the filing of a petition and the date on which the Commission would institute a formal investigation during which the Director of Operations would conduct informal investigative activities. It was proposed that the Commission would institute a formal investigation only after an affirmative petition determination had been made by the administering authority. Several comments pointed out that the effect of this proposed procedure would be to allow for exceedingly short periods within which parties would have had to make written submissions to the Commission. The Commission had made this proposal with the view of not instituting investigations contemporaneously with the administering authority so that private industry would not be burdened by requests for information from the Commission in cases which were eventually to be rejected by the administering authority as being based on insufficient petitions. The comments received by the Commission, however, suggest that private industry is more concerned with difficulties in preparing submissions within exceedingly brief periods than with the possibility of unnecessary work being required for questionnaires. The Commission’s final rule attempts to balance these concerns by providing for a notice of investigation issued by the Commission upon filing of a petition, or soon thereafter, and for the termination of such an investigation in the event that the administering authority determines that the petition is insufficient. The Director is expected to consult with the administering authority concerning the sufficiency of a petition; thus, a notice of investigation may not be issued immediately. It is anticipated that the Commission staff will limit its requests for information during this first 20-day period and also will notify all persons to whom such requests for information had been made in the event that the administering authority makes a negative petition determination. Another effect of instituting a formal investigation by the Commission upon or soon after the filing of a petition is to extend notice for the filing of written statements with the Commission in preliminary investigations from the period of 4 days (which received much adverse comment) to a period of approximately 21 days.

Other comments with respect to subpart B dealt with the Commission proposal that the Director of Operations conduct a conference in lieu of a full Commission hearing in preliminary investigations. Several comments suggested that this procedure would deprive interested parties of an opportunity to argue fully their positions before the Commission. It was also suggested that in the event a conference and not a full Commission hearing were held, the Commission would rely excessively on its staff instead of exercising its statutorily required independent judgment in reaching its determination. These comments, however, ignore the provision of the Trade Agreements Act which very clearly do not require any form of Commission hearing in a conference in a preliminary investigation. The Commission, by allowing a conference with the staff, has struck an appropriate balance between the exigency of reaching determinations of reasonable indication of injury in every antidumping and countervailing duty case (as opposed to only a limited number of special cases in the past) against providing an opportunity to interested parties to have a hearing in every case. The Commission is also aware that the procedures required by the Trade Agreements Act have made antidumping and countervailing duty investigations more litigious and hence expensive for all concerned, and therefore choose, when it is able, to avoid unnecessary formalization of presentations before the agency. The Commission has, nevertheless, decided to reserve to itself the authority in special circumstances to order a full hearing in preliminary investigations.

A final category of comments on subpart B was directed at the concept of delegation by the Commission to the Director of Operations for the conduct of preliminary investigations. At the outset, it should be emphasized that even though the Director of Operations and his staff are authorized by subpart B to conduct investigative activities on behalf of the Commission, and even to file recommended findings of fact with the Commission, it is still the function of the Commission itself to make the determination of reasonable indication of injury based on the material provided by the staff. The Commission has successfully followed a similar procedure for several years in unfair trade practice investigations under section 337 of the Tariff Act of 1930.

Subpart C

A large number of comments were directed at what was perceived to be an excessive limitation on the submission by parties of information to the Commission subsequent to the filing of prehearing statements. The Commission has made two significant changes in its rules to respond to these comments. First, argument will be permitted at the hearing not only on points raised in the prehearing statements, but also with respect to information not available at the time the prehearing statement was filed. Second, the Commission has decided to allow posthearing briefs of a limited length within a time to be fixed at the hearing. In this way, parties will be able to respond to new controversies and information raised at the hearing. The Commission also received comments to the effect that limiting a nonparty participant at the hearing to a "brief statement of its position with respect to the subject matter of the investigation" was overly narrow. It is the position of the Commission that such a standard is, on the contrary, extremely broad and will allow persons appearing before the Commission to bring their expertise to bear on the issues at hand. A final comment submitted in this area concerned the unavailability of cross-examination of witnesses at the hearing. The hearing conducted by the Commission in antidumping and countervailing duty investigations is not a hearing governed by the adjudicative provisions of the Administrative Procedure Act. It is, therefore, not the intention of the Commission to change its current practice set out in § 201.2(c), which limits questioning of witnesses to the purpose of assisting the Commission to obtain relevant and
Other comments expressed concern that the Commission, by enumerating factors which indicate the presence of injury, has altered its current practice of satisfying itself that there exists a causal relationship between subsidized or dumped imports and injury to domestic industries. These comments also suggested that the Commission make clear that the examination of causal relationship does not mean that the Commission will expect petitioners to assume the burden of demonstrating that their injury is not a result of factors other than the dumped or subsidized imports. Accordingly, the Commission has changed the language in its final rules to show that the Commission will continue its practice of requiring a causal relationship without weighing the causes.

Subpart D

In spite of a comment to the effect that the failure of the Secretary of the Treasury to find "substantial doubt" as to the injury of a U.S. industry and to refer an investigation to the Commission under section 201(c)(2) of the Antidumping Act, 1921, constitutes a determination by the Secretary of the Treasury that there is a reasonable indication of material injury to a domestic industry within the meaning of section 701 or 731 of the Act, the Commission understands section 102(b) of the Act to require it to make an independent preliminary determination of material injury to a domestic industry in circumstances where the Secretary has not yet made a tentative determination under the Antidumping Act before the effective date of the Trade Agreements Act.

Comments from several sources, including the Executive Branch, suggested that § 207.31 be amended to allow greater flexibility for the Commission in choosing the priority of making determinations in such investigations, would consider all of the merchandise subject to investigation without regard to the agreement. Because complete elimination of injurious effects suggests that all of the merchandise subject to an investigation must be covered by the agreement, a review "without regard to the agreement" would appear to be impossible; thus, §§ 207.41 and 207.43, literally read, were contradictory. The Commission intended the two rules to provide for a scope of review covering all imports which were the subject of the suspended investigation, regardless of whether the agreement applied to less than all imports (as, for example, where most—but not all—of the foreign exporters accede to the agreement). The Commission, therefore, has changed § 207.43 to provide merely that the Commission will consider all of the merchandise subject to the investigation.

Another comment indicated a technical error in § 207.45(a)(2), namely, that the word "not" was omitted in two places which resulted in an improper statement of the subject of the Commission's review. The Commission has revised the language to read "whether changed circumstances exist which indicate that an industry in the United States would not be threatened with material injury or the establishment of such an industry would not be materially retarded if the countervailing duty order or antidumping order were modified or revoked." (Emphasis supplied here only.)

Finally, several comments on § 207.45 stated that the Commission should provide explicitly for review of dumping findings issued under the Antidumping Act, 1921. The Commission has added language to the final rule to provide for review of both dumping findings issued under the Antidumping Act, 1921, and countervailing duty orders issued under the subsidy provisions of section 303(b) of the Tariff Act.

A section-by-section analysis of the final rules follows.

§ 207.1 Applicability of part.

This introductory rule makes the procedures set forth in part 207 applicable to all investigations conducted by the Commission under section 303 or title VII of the Tariff Act of 1930 (the Act). The inclusion of section 303 investigations is required by section 103 of the Trade Agreements Act of 1934, which makes the procedures and findings with respect to countervailing duty investigations set
forth in title VII of the Act applicable to merchandise imported from any nation which is not a "country under the Agreement" (defined in section 701(b) of the Act) and which is free of duty. A determination of injury pursuant to title VII of the Act is not required with respect to dutiable merchandise imported from a nation which is not a "country under the Agreement."

Subpart A—General Provisions

Subpart A contains rules applicable to all Commission investigations under section 303 and title VII of the Act and sections 102-107 and title X of the Trade Agreements Act.

§ 207.2 Definitions applicable in Part 207

This rule defines certain terms used repeatedly in Part 207.

(a) The term "the Act" is defined to mean the Tariff Act of 1930.

(b) The definition of "administering authority" is taken directly from section 777(1) of the Act. Section 103 of the Trade Agreements Act, amending section 303(b) of the Act, provides that the duty imposed by section 303(a) is to be administered in accordance with title VII (section 771(1)).

(c) The definition of "country under the Agreement" is taken directly from section 701(b) of the Act.

(d) The term "Director" is defined to mean the Commission's Director of Operations or someone appointed to act in that capacity, or, if there is neither, a person designated by the Chairman to fulfill the responsibilities of the Director with respect to investigations under this part.

(e) The definition of "effective date" reflects the provisions of section 107 of the Trade Agreements Act of 1979.

(f) The definition of "ex parte meeting" is derived from section 777(a)(3) of the Act. The Commission intends that only the Director of Operations will make a "final recommendation" to the Commission within the meaning of section 777(a)(3)(B) of the Act. The term "other person" as used in this rule does not refer to Commission staff.

(g) The term "injury" is defined to mean material injury or threat of material injury to an industry in the United States, or material retardation of the establishment of an industry in the United States. The definition is intended to allow shorthand reference throughout part 207 to the three types of harm at which section 303 and title VII of the Act are directed.

(h) The definition of "interested party" is taken directly from section 771(9) of the Act.

[The rest of the text is redacted, but the rule continues to define terms and provide requirements for the maintenance and content of ex parte meetings, records, and other related topics.]

§ 207.5 Ex parte meetings.

This rule establishes requirements for the maintenance and content of ex parte meeting records as required by section 777(a)(3) of the Act. The rule provides that a record of each such meeting, as defined in § 207.2(f), shall be placed in the record, and that each meeting record shall include the identity of the persons present, the date, time and place of the meeting, and a summary of the matters discussed or submitted.

§ 207.6 Reports of progress of investigation.

This rule establishes requirements for the Commission Secretary to inform the parties to an investigation of the progress of that investigation. Such reports are required "from time to time upon request" by section 777(a)(2) of the Act. To prevent an undue burden on the Commission staff, the section provides that no progress report will be furnished (1) less than 30 days after notice of an investigation appears in the Federal Register, or (2) less than 30 days after issuance of the previous report on the progress of the same investigation. Reports will be limited to a statement of the official actions, if any, taken by the Commission since the last such report. It is contemplated that the Secretary on his own initiative will issue monthly reports updating the progress of all investigations over 30 days old.

§ 207.7 Limited disclosure of certain confidential information under a protective order.

(a) In general. This subsection establishes procedures for the disclosure of domestic price and cost information under protective order to attorneys, except in-house counsel, of interested parties who are parties to the investigation. Disclosure of any business information under protective order is authorized by section 777(c)(1) of the Act, but disclosure of domestic price or cost of production information submitted by the petitioner or an interested party in support of the petition may be required under court order pursuant to section 777(c)(2) of the Act. In fact, the Commission rarely, if ever, collects domestic cost of
production information, and it only collects price information relevant to the products in question. The term “domestic price” as used in this rule does not mean the price of an imported product in the United States. The Secretary will release such domestic price and cost information under a protective order if the interested party applying for such information demonstrates to the satisfaction of the Secretary a substantial need for the information in the prosecution of his case and that he is unable without undue hardship to obtain the substantial equivalent of the information by other means. Decisions of the Secretary denying requests for release of such information will be directly appealable to Customs Court. Requests for release under protective order of confidential information other than such domestic price or cost of production data may be granted by the Secretary only where all the interested parties who are parties to the proceeding agree to the terms of the request. Although the Commission is authorized by section 777(c)(1) of the Act to release additional confidential information under protective order to any party to the investigation, this rule limits disclosure of such additional information to interested parties who are parties to the proceeding and only when all such interested parties agree to this disclosure. Given the Commission’s lack of experience with protective orders in antidumping and countervailing duty investigations and the fact that the Customs Court will not be exercising the direction provided in the Act for requests for domestic price and cost of production information, the Commission is not going to exercise the full range of its authority to release confidential information dealing with data other than domestic prices or cost of production until it has accumulated administrative experience with these protective order requests.

(b) Protective order. This subsection establishes the conditions for the release of domestic attorneys (except in-house counsel) of confidential information under a protective order.

(c) Final disposition of material released under protective order. This subsection establishes procedures and requirements for the final disposition of material released under protective order. At the completion of an investigation (or at such earlier date as the Secretary deems appropriate), all copies of the released material and all other materials containing the confidential information must be returned to the Secretary. Returned materials must be accompanied by a certificate from the person to whom the release was made attesting to his good faith effort to ascertain that no additional copies have been made available to any person to whom disclosure was not specifically authorized.

(d) Sanctions. This subsection establishes sanctions for breach of a Commission protective order. Section 777(c)(1)(B) of the Act authorizes the Commission to establish such sanctions for breach of protective order as it determines to be appropriate. The sanctions contained in this subsection include being barred from practice before the Commission, referral of any breach to the U.S. Attorney and to the ethics panel of the appropriate professional association, and striking from the record any information or briefs submitted by the offender.

(e) Sanction procedures. This subsection establishes the right of any person accused of breaching a protective order to be heard by a Commission before a determination regarding sanctions is made.

§ 207.8 Questionnaires to have the force of subpoenas: subpoena enforcement.

This rule provides that Commission questionnaires have the force of a subpoena, provided they are labeled as subpoenas and signed by a Commissioner. In the event any person refuses or is unable to produce the information requested in such a questionnaire in a timely fashion, the Commission may (1) in accordance with section 776(b) of the Act use the best information otherwise available in making its determination, (2) seek judicial enforcement of its subpoena under 19 U.S.C. 1333, or (3) take any other actions it deems necessary and appropriate to ensure that within any time limits set forth in part 207. See Usery v. Whitten Machine Works, Inc., 554 F. 2d 498 (5th Cir. 1977).

§ 207.9 Affirmative determinations by divided Commission.

This rule establishes a voting rule for investigations under part 207 to apply in instances where the Commissioners voting are evenly divided regarding whether any determination should be affirmative or negative. The rule is intended to implement and clarify section 771(11) of the Act. The rule explains, if the Commissioners voting on a determination required under section 303 or title VII of the Act are evenly divided regarding whether the determination should be affirmative or
circumstances to provide reasonably available information relevant to the additional findings which the Commission must make pursuant to sections 705(b)(4)(A) and 735(b)(4)(A) of the Act in the event critical circumstances are found by the administering authority. Petitioners are advised to consult the applicable regulations of the administering authority for the required contents of a petition.

§ 207.12 Notice of investigation of reasonable indication of injury.

Upon receipt of a petition or of notice that the administering authority has initiated an investigation based on information available to it, the Director will consult with the administering authority and, as soon as practicable, institute a formal investigation to determine whether there is reasonable indication of injury under section 703(a) or 733(a) of the Act and publish a notice to that effect in the Federal Register.

§ 207.13 Cooperation with administering authority: preliminary investigation.

This rule provides that the authority to conduct investigations of reasonable indication of material injury is delegated from the Commission to the Director of Operations. The delegation includes the exercise of the Director's discretion as to how best to conduct each such investigation. Information adduced through the investigative activities of the Director will be placed on the record.

The decision to delegate the conduct of such investigations from the Commission to the Director is based upon the Commission's administrative experience. Currently, the Commission conducts a limited number of investigations under section 201(c)(2) of the Antidumping Act, 1921. The use of questionnaires and public hearings presided over by the full Commission in these investigations has been extremely taxing on the resources of the agency. The agency's resources are not great enough to conduct such proceedings in both preliminary and final investigations especially in view of the anticipated caseload of new and transitional investigations.

This rule also authorizes the Director to cooperate with the administering authority after a petition is filed to assist the administering authority with its determination under section 702(c) or 732(c) of the Act regarding whether a petition alleges the elements necessary for the imposition of a duty under section 701(a) or 731(a) of the Act. The Director will also cooperate with the administering authority with respect to proposed amendments to petitions. It is the intention of the Commission that this rule satisfy its statutory obligation under sections 702(b) and 732(b) of the Act concerning amendments to petitions. Notwithstanding any assistance provided by the Director to the administering authority under this rule, all determinations under sections 702(c) and 732(c) are ultimately to be made by the administering authority.

§ 207.14 Negative petition determination.

This rule implements sections 702(c) and 732(c) of the Act, which provide that in those cases in which the administering authority determines that the petition does not allege the elements necessary for the imposition of a countervailing or antidumping duty, as the case may be, and accordingly, the petitioned-for investigation is dismissed, the Commission shall terminate its contemporaneous investigation. Because notice will have been provided by the administering authority, no additional notice of termination will be issued by the Commission.

§ 207.15 Written statements and conference.

Section 207.15 provides that any person may submit to the Commission or before a date specified in the Commission's notice of investigation a written statement of information pertinent to the subject matter of the investigation. Joint conferences may be scheduled for parties if the Director deems them appropriate. Conferences will be held after public notice and in accordance with § 201.12(a). The transcripts of such conferences will be placed on the administrative record of the investigation. Although it does not appear to be feasible generally to schedule formal hearings before the Commission within the available time, the Commission is authorized to hold a hearing in lieu of the Director's holding a conference.

§ 207.16 Recommendation of Director.

This rule requires the Director of Operations to prepare a recommendation to the Commission based upon the record of the investigation of reasonable indication of injury. The Commission may choose to accept or reject this recommendation in whole or in part.

§ 207.17 Determination by Commission of reasonable indication of injury.

This rule provides that, in all cases other than those in which the administering authority dismisses the petition, the Commission shall make a determination, based upon the best information before it at the time of whether there is reasonable indication of injury by reason of imports of merchandise which is the subject of the investigation. It is anticipated that the large number of investigations and the short time available in which to conduct them may necessitate preliminary determinations frequently to be made by internal Commission consecutive voting procedures rather than at scheduled public meetings.

§ 207.18 Notice of preliminary determination.

This rule provides that the Commission shall notify all parties to its preliminary investigation of its determination and publish a notice of its determination in the Federal Register. In cases where the Commission's preliminary determination is affirmative, the Director of Operations may continue such investigative activities as he deems appropriate pending notice of an affirmative preliminary determination or a final determination from the administering authority.

Subpart C—Final Determinations

Subpart C contains the procedures specifically applicable to final determinations.

§ 207.20 Notice of investigation.

Although it is not required by the statute, by this rule the Commission intends to give to the public notice of its commencement of an investigation to reach a final determination under section 705(b) or 735(b) of the Act. In the event of a negative final determination by the administering authority subsequent to an affirmative preliminary determination, the Commission's notice shall terminate. Because notice will have been provided by the administering authority, no additional notice will be issued by the Commission.

§ 207.21 Staff report.

This rule requires the Commission to place on the record a staff report containing preliminary findings of fact. It is intended that portions of the staff report containing confidential or privileged information be placed on the nonpublic record and the remainder of the staff report, including the nonconfidential summary of the confidential or privileged portions be placed on the public record. Section 207.04 provides for the maintenance of the record in two portions, the public portion containing nonconfidential material and the nonpublic portion containing privileged and confidential
material. This rule sets anticipated time limits for submission of the staff report. In 75-day investigations it will generally be filed on or before the 45th day after the date of the corresponding Commission notice of investigation. In 120-day investigations or extended investigations under section 735(a)(2) of the Act the staff report will generally be placed on the record on the third day after the date of issue by the administering authority of its final determination. In 150-day investigations the staff report will generally be placed on the record on or before the 130th day after the date of the corresponding Commission notice.

The purpose of this procedure is to provide to the parties a preliminary indication of the Commission staff’s view of the affected industry. Parties should be advised of all adversary positions. Nevertheless, because all information pertinent to the proceeding may be unavailable at the time prehearing statements are prepared, the rule also allows arguments at the hearing with respect to subsequently available information. Persons appearing at the hearing who are not parties, namely, consumer or other groups with no direct economic interest in the outcome of the proceeding, may appear and make a statement at the hearing.

It is anticipated that parties will make copies of witnesses’ formal testimony available before the beginning of the hearing in accordance with § 201.12(d), and that hearing presentations will be brief, to the point, and will, to the greatest extent possible, summarize the arguments set forth in the prehearing statements and in the witnesses’ prepared written testimony. A verbatim transcript will be made of the hearing and will be subject to nonsubstantive revision in accordance with paragraph (c)(2) of this rule. The transcript will be placed on the public record.

§ 207.24 Posthearing submissions.
This rule supersedes § 201.12(g). The Commission may order interested parties to submit within a specified time posthearing statements responsive to questions or requests of Commissioners made at the hearing. The short time between the hearing and the promulgation of the Commission’s opinion in these investigations will make it impossible for the Commission to give careful analysis to extensive posthearing briefs. Accordingly, the rule limits posthearing briefs to ten double-spaced pages. Any other posthearing submissions must be responsive to Commission requests or questions.

§ 207.25 Final determination by the Commission.
This rule restates sections 705(A)(1) and 735(A)(1) of the Act, which require the Commission to make a final determination of injury. Paragraph (b) of this rule restates the provisions of the Act which allow the Commission 120 days from the time the administering authority makes its affirmative preliminary determinations to make a final determination under section 705 or 735 of the Act. However, if the administering authority takes more than 75 days to make its final determination, then the Commission is guaranteed by the Act and by this rule at least 45 days after the final determination of the administering authority to make its final determination. Thus, if the administering authority takes more than 75 days to make its final determination, the total elapsed time from the administering authority’s preliminary determination to the Commission’s final determination will be more than 120 days.

Paragraph (c) of this rule, again tracking the Act, provides that, if the administering authority makes an affirmative final determination following a negative preliminary determination, then the Commission will have 75 days after the date of that affirmative final determination to make its final determination.

Paragraph (d) of this rule sets forth the additional findings required by the Act in special situations. If the finding of the adoluminishing authority as to critical circumstances under section 705(a)(2) of the Act is affirmative, then the Commission must make a finding that there is material injury which will be difficult to repair and that the material injury is by reason of massive imports of the subsidized merchandise over a relatively short period of time. The corresponding provision in the antidumping area found in section 735(a)(3) of the Act requires the Commission to make a determination as to whether the material injury in critical circumstances is by reason of massive imports to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the duty provided for in section 731 of the Act retroactively on those imports.

The final subsection of this rule is based on sections 705(b)(4)(B) and 735(b)(4)(B) of the Act, which require the Commission, when it makes a final determination that there is no material injury, to determine whether material injury by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under section 705(a) and 735(a) of the Act would have been found but for any suspension of liquidation of entries of the merchandise.
§ 207.26 Factors considered in determination of material injury.

This rule incorporates the factors set forth in section 771(7) of the Act to be considered by the Commission in making its determinations of injury under the Act. The illustrative factors which the Commission may consider in making its determination of threat of injury, derived from the report of the Committee on Ways and Means (H.R. Rep. No. 98-317, 96th Cong., 1st Sess. 47 (1979)), are also incorporated in this rule. The factors listed in this rule are not exclusive. Commission determinations of injury are governed ultimately by the standards in the following rule and by the judgment and discretion of the Commission.

§ 207.27 Standard for determination.

This rule reiterates that the presence or absence of any factor which the Commission is required to consider under the preceding rule shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury. The term "material injury" means harm which is not inconsequential, immaterial, or unimportant.

The enumeration in § 207.28 of the factors which must be considered in making countervailing and antidumping injury determinations—i.e., factors which for the first time are specified in the statutory text and consist of various factors, some of which singly or in combination have been considered relevant and determinative by the Commission under current law—provides no basis for changing the causality relationships which must be found to exist under existing law. It has been the long and uniform interpretation of existing law that an affirmative injury determination by the Commission requires the existence of a causal relationship between the subsidized or dumped U.S. imports and injury to a U.S. industry. This causation linkage between the offending imports and injury is based in existing law on the language in section 201(a) of the Tariff Act of 1930 and in section 303(b) of the Tariff Act that such injury is "by reason of the importation of such merchandise." Both section 701(a) and 731 of the new provisions for antidumping and countervailing duties also require the same linkage test, viz., that the injury is "by reason of imports of that merchandise." The Commission will consider factors other than subsidization or dumping which contribute to injury. However, the law does not require the Commission to determine that imports subsidized or sold at less than fair value are injuring an industry in the United States to a degree greater than any one or a combination of other factors as a condition necessary for an affirmative determination.

§ 207.28 Publication of notice of determination.

This rule incorporates the standards of section 773(d) and 735(d) of the Act, which require the Commission to notify the petitioner, other parties to the investigation, and the administering authority of the Commission's determination and of the facts and conclusions of law upon which the determination is based. Notice of such determination will be published by the Commission in the Federal Register.

Subpart D—Transition

This subpart sets forth rules implementing for the Commission sections 102, 103, and 104 of the Trade Agreements Act of 1979 with respect to investigations under section 303 of the Tariff Act of 1930 and the Antidumping Act, 1921, that are pending as of the effective date of title VII of the Tariff Act of 1930, which the Commission now expects to be January 1, 1980. These rules also prescribe the priorities the Commission will use in scheduling investigation and consideration of certain classes of cases arising under this subpart.

§ 207.30 Pending investigations and preexisting countervailing duty orders.

This rule implements sections 102 and 103 of the Trade Agreements Act of 1979 by setting forth the principles for instituting, and the procedures applicable to investigations under title VII of the Tariff Act of 1930, as amended by the Trade Agreements Act, which were the subject of investigations pending before the effective date. Under section 103 of the Trade Agreements Act, investigations pursuant to section 303 of the Tariff Act of 1930 are subject to the procedural rules of title VII of the new law except to the extent that those rules would not be applicable to such proceedings. These rules may not be applicable because the product concerned is not a product of a country under the agreement, is not a duty free article, or is a duty-free article from a country as to which the international obligations of the United States do not require an injury determination. As to section 303 cases that are subject to title VII, and cases that concern products that were the subject of pending investigations under the Antidumping Act, 1921, section 102 generally provides that the investigation of the same matter would continue after the effective date of the new law so as to begin the proceeding under the new law as if the determination under the new law that is most closely analogous to the latest determination actually made under the old law had been made on the effective date. Finally, § 207.30 implements section 104 of the Trade Agreements Act concerning countervailing duty orders in effect pursuant to the provisions of existing law which require some further action by the Commission. As to these various classes of cases, the following rules apply.

Under paragraph (a)(1), if the Secretary has not made a preliminary determination, including either a preliminary determination under section 303(a)(4) of the Tariff Act of 1930 or section 201(b)(1) of the Antidumping Act, 1921, then the Commission will institute an investigation to determine whether there is a reasonable indication of injury in accordance with title VII of the Tariff Act of 1930, as amended by the new law. Since the new law clearly intends that the Commission have the full 45 days that would normally be allocated to it for such a preliminary determination, this rule interprets section 102(a)(1) and section 102(b)(1) as providing the Commission with the full 45 days normally available for a reasonable indication determination under the new law, even though with respect to petition-initiated investigations, section 102 provides that these investigations are to begin "as if" an affirmative decision on institution had been made on the effective date. This interpretation is based upon the fact that under the new law, no time period was calculated from the institution decision under title VII, and therefore the statute can only be read to allow a full 45-day period.

Under paragraph (a)(2), if the administering authority has made a preliminary but not a final determination as of the effective date, then the Commission proceeds with respect to the same subject matter under rules applicable to Commission investigations following a preliminary determination of the administering authority under the new law (see subpart C). These rules provide that if the administering authority's preliminary determination is affirmative, then the commission institutes an investigation leading to a final determination subject to certain counting rules provided for in the law; and if the administering authority's preliminary determination is negative, then the Commission does not institute a formal investigation unless and until the
administration authority makes a final affirmative determination. Consistent with § 207.16 concerning negative preliminary determinations by the administering authority, § 207.30(a)(2) provides that the Director will continue his investigative activities as appropriate pending the administering authority's affirmative determination. Under paragraph (b) of this rule, if the Commission is conducting an injury investigation under existing law as of the effective date of the new law, then on the effective date it shall institute a 75-day injury investigation subject to certain rules for the treatment of preexisting determinations of the Secretary of Treasury provided for in section 102 of the Act.

Paragraph (c) of this rule implements section 104(a)(2) of the Trade Agreements Act, which requires the Commission to make 180-day injury investigations with respect to certain countervailing duty orders of which the administering authority is required to notify the Commission by January 7, 1980. When this notice, together with the most current information the administering authority has with respect to the net subsidy benefiting the merchandise subject to the country under the Agreement that were therer waived or that, waived or not, were issued after July 28, 1979, and before the effective date, or fell in certain other categories set forth in the regulation.

Under paragraph (d) of this rule, other countervailing duty orders are made subject to the petition process provided for in section 104(b) of the Trade Agreements Act. These requests may be made in a simple manner, but provision is also made for the Director to require requesters to make their request by filing a form he prescribes that would allow the administering authority to consider necessary to conduct the investigation.

§ 207.31 Scheduling the institution of investigation of certain unwaved investigations. This rule sets forth the principles upon which the Commission may delay the institution of investigations arising under section 104(b) of the Trade Agreements Act, relating to unwaved, preexisting countervailing duty orders issued before the date of enactment of the Trade Agreements Act, which are provided for in § 207.30(d). The Commission at present expects, based upon the official record of outstanding countervailing duty orders set forth at 19 CFR 159.47(f) and upon other information available to it at the time of this notice, to have before it approximately 30 investigations upon which action is required earlier than action would be required in cases arising under section 104(b). The Commission has therefore tentatively determined to assign to these other cases a higher priority than it would assign to cases arising under section 104(b). This higher priority will result in a conservation of administrative resources and, ultimately, public funds.

The delay in investigation of cases arising under section 104(b) is justified by the Congressional determination to permit these cases to be decided in a much longer period of time than any other class of cases arising under the new law. The classes of cases which, because of the shorter time limits that are applicable to them, have higher priority than cases arising under section 104(b) are (1) new petitions filed under title VII of the Act (requiring preliminary Commission determinations in 45 days); (2) pending investigations requiring Commission preliminary or final determinations (45-day to 120-day determinations); and (3) cases requiring—rather than requiring only on request—Commission investigations of certain countervailing duty orders under section 104(a) of the Trade Agreements Act (180 days).

The priorities the Commission has established would allow commencement of section 104(b) investigations at any time after they are filed, so long as within 10 days after the filing of a request for such an investigation, the Secretary would inform the administering authority of the filing of the request. This notice has the effect of requiring the administering authority to suspend liquidation of entries as to the affected merchandise. This effect does not, however, depend on commencement of an active Commission investigation.

Subsequently, the rule would permit the Commission to commence a section 104(b) investigation at any time so long as it completes the investigation within 3 years after the request is filed in accordance with the law. If a number of such petitions is filed, as are presently expected, the most urgent among various investigations may be set pursuant to the rule. One of the bases of these priorities would be consolidating cases relating to like products, which would be done pursuant to the Commission's authority under section 603 of the Trade Act of 1974 to consolidate its investigations.

§ 207.32 Procedures for pending investigations. The purpose of this subsection is to make clear that the procedural rules applicable to investigations conducted under subparts B and C would apply to investigations arising under subpart D. Thus, the time limitations applicable under those subparts to the filing of staff reports, and the definitions and rules concerning hearings, the record, ex parte contacts, and so on, would all apply with full force with respect to Commission investigations in pending investigations and investigations of outstanding countervailing duty orders.

Subpart E—Investigations To Review Negotiated Agreements, and Investigations To Review Outstanding Determinations

This subpart describes procedures that implement portions of title VII of the Act, as amended by the Trade Agreements Act, which provide for special determinations in antidumping and countervailing duty investigations by the Commission. These determinations are principally found in sections 704, 734, and 751 of title VII. Subpart E concerns the termination of Commission investigations, completion and reinstitution of suspended investigations, and investigations to review both the suspension agreements of the administering authority and the determinations of the Commission when circumstances appear to have changed from those prevailing at the time of the determination.

§ 207.40 Termination and suspension of investigation. Section 207.40 concerns the termination and suspension of Commission investigations. Paragraph (a) implements section 704(a) and 734(a) of the Act which permit the Commission to terminate an investigation after the administering authority has made a preliminary determination only upon the withdrawal of the petition by the petitioner and after notice to all parties to the investigation. The Act does not require the Commission to terminate an investigation where it has a reason for not terminating notwithstanding the withdrawal of the petition.

Paragraph (b) provides that, upon receipt of a notice that the administering authority has suspended an investigation under section 704(b) or 734(b) of the Act, the Secretary shall issue a notice suspending the Commission's investigation. This
§ 207.41 Commission review of agreements to eliminate the injurious effect of subsidized imports or imports sold at less than fair value.

This rule concerns the Commission’s review of agreements negotiated by the administering authority to eliminate the injurious effect of subsidized imports or imports sold at less than fair value. The rule implements the provisions of sections 704(h) and 734(h) of the Act, which provide standing requirements for petitions for such review and a 75-day time limit for the Commission’s final determination.

§ 207.42 Investigation continued upon request.

This rule concerns the provision in sections 704(g) and 734(g) of the Act for the Commission, upon request, to continue an investigation after the publication of the notice of suspension of the investigation by the administering authority.

§ 207.43 Commission determination in investigations to review agreements and in continued investigations.

This rule provides that in investigations to review agreements and in continued investigations, described in §§ 207.41 and 207.42, the Commission shall consider all of the merchandise subject to the investigation, not merely the merchandise covered by the agreements negotiated by the administering authority.

§ 207.44 Consolidation of investigations.

This rule provides that the Commission shall consolidate investigations under section 704(g) of the Act with investigations under section 704(h) of the Act whenever such consolidation is appropriate. This rule is authorized by section 335 of the Act and by section 603 of the Trade Act of 1974.

§ 207.45 Investigation to review outstanding determinations.

This rule implements section 751 of the Act which provides for the Commission to review a determination concerning an agreement to suspend an investigation or a determination concerning injury to a domestic industry upon the receipt of information showing changed circumstances. The rule also provides for review of outstanding orders issued under the Antidumping Act and the duty-free merchandise provisions of section 303(b) of the Act. In the absence of good cause, an investigation to review a determination or suspension agreement will not be instituted until at least 24 months after the date of publication of the notice of the determination or suspension.

§ 207.46 Modification, clarification, or correction of a determination.

This rule implements section 751 of the Act which provides that the Commission will issue any modification, clarification, or correction of a determination as may be necessary. This authority has been previously exercised. See Clarification of Determination in Investigation of Steel Wire Rope from Japan (95 FR 27750 (1973)).

Subpart F—Judicial Review

Subpart F deals with judicial review of Commission determinations under section 303 and title VII of the Act.

§ 207.50 Judicial Review.

This rule establishes procedures to facilitate judicial review of Commission determinations in the U.S. Customs Court under section 516A of the Act. The rule provides that a copy of the record (as defined in § 207.21) in the Commission proceeding, or a certified list of the items therein, will be transmitted to the Court by the Commission’s Secretary in accordance with the rules of the Court. The Commission’s General Counsel is appointed the Commission’s agent for service of process in cases arising under section 516A.

§ 207.51 Judicial review of denial of applications for disclosure of certain confidential information under protective order.

This rule establishes procedures to facilitate judicial review in the U.S. Customs Court under section 777(c)(2) of the Act of Commission determinations not to disclose under protective order confidential information concerning domestic price or cost of production.

Paragraph (a) of the rule deals with transmittal of the record and reflects section 2533(c) of the proposed Customs Court Act of 1979 (S. 1554, 96th Cong., 1st Sess. sec. 2533(c) (1979). Paragraph (b) provides that, when a court order is sought under section 777(c)(2), the Secretary shall within 5 days after service of a summons and complaint upon the Commission transmit to the Court under seal the confidential information involved along with “pertinent parts of the record.” Pertinent parts of the record is defined in subsection (c) to consist of (1) the application for Commission disclosure, together with any documents filed in support thereof or in opposition thereto, (2) any governmental memoranda relating to the Commission’s denial, and (3) the Commission’s denial of the application. Subsection (d) provides that the Commission’s General Counsel is appointed the Commission’s agent for service of process in cases arising under section 777(c)(2).

Conforming Amendments

The Trade Agreements Act requires several changes in existing Commission rules for conducting subsidy and antidumping investigations. These necessary conforming amendments are primarily technical in nature, and are confined to part 201 of title 19 of the Code of Federal Regulations (19 CFR 201.00-41). The amendments are as follows.

§ 201.1 Applicability of part.

There presently exists a grammatical error in the second sentence of this section. By substituting “through” for “and” in the phrase “parts 202 and 207, inclusive,” it is intended to make clear that rules of special application may appear in all of Parts 202, 204, 205, and 207 which in case of conflict will take precedence over the rules of general application set forth in Part 201.

§ 201.2 Definitions.

The conforming amendments propose three additional definitions for terms used extensively in Part 207, but which are found in other parts as well. The new definitions—"Trade Agreements..."

§ 201.7 Investigative authority and initiation of investigations.

Present rule 201.7 provides the means by which investigations may be initiated by the Commission. The methods outlined in the rule remain applicable under the new law, and are retained in a new paragraph (a). Paragraph (a) is added to make clear the Commission's prerogative to take those steps necessary for the expeditious and economical conduct of its proceedings. For example, separate investigations conducted under part 207 relating to like products may be combined if the circumstances warrant. Similarly, adjudicative investigations conducted under part 210 involving complaints and countermotions of unfair trade practices may be consolidated into a single proceeding.

§ 201.9 Methods employed in obtaining information; § 201.11 Public hearings.

In several sentences in these rules the word "evidence" is used in describing the information gathered in the course of Commission nonadjudicative proceedings. To make clear that the information upon which the Commission rests its determination in these proceedings is not evidence in the sense that it has been tested in an adjudicative forum, the word "information" is substituted for "evidence" where it now appears—in § 201.8, § 201.11(c), § 201.12(e), and § 201.12(g).

§ 201.12 Conduct of nonadjudicative hearings or conferences.

Besides the changes of the word "evidence" to "information" described above, the following amendments are proposed for § 201.12:

(a) Section 201.12(a) is amended by the addition of the words "or conferences" after the term "hearings" in each place such term is used, including the title of the rule. This amendment establishes procedures for the conduct of conferences which may be held pursuant to subpart B of Part 207 of these rules.

(d) Submission of prepared statements.

Section 201.12(d) is amended to require that witnesses' prepared statements shall be submitted not less than 3 business days prior to a hearing. Distribution of such statements for the first time at the hearing will no longer be allowed. The strict time requirement is necessary in view of the expedited conduct of investigations set forth in new Part 207.

(i) Hearing transcripts.

“(f)” is a typographical error denoting this subsection. The amendment will correctly number the paragraph as § 201.12(f).

(i) Requests.

New paragraph (i) will allow parties to request the Commission (or its delegate) to take specific action thought to be necessary by the requester to facilitate the proceeding in which he is involved. It is contemplated that such requests will involve the timing or conduct of specific proceedings and similar matters. By requiring service of such requests on all parties, the rule provides an opportunity for comment or objection; however, it is not intended that a motions practice will evolve in Commission nonadjudicative investigations. The Commission will make an appropriate response to a request, but that may include taking no action.

§ 201.13 Who may enter an appearance.

Section 201.13(a) is amended to delete the requirement that an appearance be entered "for the purpose of appearing at a public hearing." Because parties may enter an appearance without participating in any hearing, the requirement is unnecessarily restrictive.


Part 207 of the Commission's Rules of Practice and Procedure (19 CFR 207) is hereby repealed. A new Part 207 is established as follows:

PART 207—INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE OR FROM SUBSIDIZED EXPORTS TO THE UNITED STATES

Sec.

207.1 Applicability of part.

Subpart A—General Provisions

207.2 Definitions applicable in part 207.

207.3 Service of documents.

207.4 The record.

207.5 Ex parte meetings.

207.6 Reports of progress of investigation.

207.7 Limited disclosure of certain confidential information under a protective order.

207.8 Questionnaires to have the force of subpoenas; subpoena enforcement.

207.9 Affirmative determinations by divided Commission.

Subpart B—Preliminary Determinations

207.10 Filing of petition with Commission.

207.11 Contents of petition.

207.12 Notice of investigation of reasonable indication of injury.
preliminary investigations under section 303 and title VII of the Act. Subpart C sets forth rules dealing with investigations requiring final determinations under section 303 and title VII of the Act. Subpart D is concerned with transitional cases, i.e., pending cases and countervailing duty orders under existing law. Subpart E addresses termination of an investigation, suspension and continuation of an investigation, and investigations to review negotiated agreements and determinations in effect. Subpart F deals with judicial review of determinations made by the Commission under section 303 and title VII of the Act.

Subpart A—General Provisions

§ 207.2 Definitions applicable in Part 207.

For the purposes of this part, the following terms have the meanings here assigned to them:
(a) The term "the Act" means: The Tariff Act of 1930.
(b) The term "administering authority" means: The Secretary of the Treasury, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under section 303 or title VII of the Act is transferred by law.
(c) The term "country under the Agreement" means:

- A country—
  (1) Between the United States and which the Agreement on Subsidies and Countervailing Measures applies, as determined under section 2(b) of the Trade Agreements Act of 1979;
  (2) Which has assumed obligations with respect to the United States which are substantially equivalent to obligations under the Agreement, as determined by the President, or
  (3) With respect to which the President determines that—
    (i) There is an agreement in effect between the United States and that country which—
      (A) Was in force on June 19, 1979, and
      (B) Requires unconditional most-favored-nation treatment with respect to articles imported into the United States;
    (ii) The General Agreement on Tariffs and Trade does not apply between the United States and that country, and
    (iii) The agreement described in subparagraph (i) does not expressly provide for:
      (1) Actions required or permitted by the General Agreement on Tariffs and Trade, or required by the Congress, or
      (2) Nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices.
(d) The term "Director" means: The incumbent Commission Director or Acting Director, Office of Operations, or, in the absence of either, a person designated by the Chairman.
(e) The term "effective date" means:

- January 1, 1980, or such other date as is required by section 107 of the Trade Agreements Act as the effective date of title I of that Act.
(f) The term "ex parte meeting" means:

- Any communication between
  (1) Any interested party or other person providing factual information in connection with an investigation, and
  (2) Any Commissioner or Commissioners, or members of Commissioner's staffs, or the Director of Operations, in which less than all parties participate, and which is not a hearing or conference for which an opportunity to participate is given to the parties.
(g) The term "injury" means: Material injury or threat of material injury to an industry in the United States, or material retardation of the establishment of an industry in the United States, by reason of the importation into the United States of a class or kind of merchandise which is found by the administering authority to be (1) subsidized, or (2) sold, or likely to be sold, at less than its fair value.
(h) The term "interested party" means:

- (1) A foreign manufacturer, producer, or exporter, or the United States importer, of merchandise which is the subject of an investigation under title VII of the Act, or a trade or business association a majority of the members of which are importers of such merchandise;
- (2) The government of a country in which such merchandise is produced or manufactured;
- (3) A manufacturer, producer, or wholesaler in the United States of a like product;
- (4) A certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product; and
- (5) A trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.
(i) The term "parties" means: Any interested party who has entered an appearance with the Commission or any other person who, after showing under § 201.13 to the satisfaction of the Commission a proper interest in the subject matter of an investigation, has filed such an appearance.
(j) The term "record" means: (1) All information presented to or obtained by the Commission during the course of a proceeding, including completed questionnaires, information obtained from the administering authority pursuant to sections 702(d)(2), 732(d)(2), 702(d)(5), 732(d)(5), 705(c), and 735(c) of the Act, written communications from any party, recommended findings of fact by the Director of Operations, staff reports, all governmental memoranda pertaining to the case, and the record of ex parte meetings required to be kept pursuant to section 777(a)(3) of the Act; and
- (2) A copy of all Commission orders and determinations, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

§ 207.3 Service of documents.

Any party submitting a document for inclusion in the record of the investigation shall, in addition to complying with § 201.8, serve a copy of each such document on all other parties to the investigation in the manner prescribed in § 201.18. Failure to comply with the requirements of this rule may result in removal from status as a party. The Commission shall make available to all parties to the investigation a copy of each document, except transcripts of conferences and hearings, placed in the record of the investigation by the Commission.

§ 207.4 The record.

(a) Maintenance of the record. The Secretary shall maintain the record of each proceeding conducted by the Commission pursuant to section 303 or title VII of the Act. The record shall be maintained contemporaneously with each actual filing in the record. It shall be divided into public and nonpublic sections. The Secretary shall also maintain a contemporaneous index of all documents, including exhibits thereto, and all other materials incorporated in the record. All material filed with the Secretary shall be placed in the record. All material which is placed in the record shall be maintained in the public record, with the exception of material which is privileged, or which is business confidential information submitted in accordance with § 221.6. Privileged and business confidential material shall be maintained in the nonpublic record.

(b) Audits by the Director. The Director may in his discretion audit completed questionnaires or otherwise
verify information received in the course of a proceeding. To the extent an audit or verification results in new or different information, the Director shall place such information on the record.

(c) Materials provided by the administering authority. Materials received by the Commission from the administering authority shall be placed on the Commission's record and shall be designated by the Commission as public or nonpublic in conformity with the applicable designation of the administering authority. Any requests to the Commission either to permit access to such materials or to release such materials shall be referred to the administering authority for its advice.

§ 207.5 Ex parte meetings.

There shall be included in the record of each proceeding a record of ex parte meetings as required by section 777(a)(3) of the Act. The record of each ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted.

§ 207.6 Reports of progress of investigation.

The Secretary shall upon the request of a party inform the parties to an investigation of the progress of that investigation. No such progress report, however, shall be issued by the Secretary less than 30 days after the date of publication of commencement of an investigation by notice in the Federal Register, nor will the Secretary be required to issue a report on the progress of any investigation less than 30 days after the date of issuance of the previous such report with respect to the same investigation. A report shall be limited to a statement of what official actions the Commission has taken since the previous such report, if any.

§ 207.7 Limited disclosure of certain confidential information under a protective order.

(a) In general. Upon request of an attorney of a party to the investigation, excepting in-house counsel, which describes with particularity the information requested, sets forth the reasons for the request, and demonstrates a substantial need for the information in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the information by other means, the Secretary will make available confidential information concerning the domestic price and cost of production of the like product submitted by the petitioner or an interested party in support of the petition to such attorney under a protective order described in paragraph (b). Upon filing with the Secretary of an agreement among all interested parties who are parties to the proceeding requesting the release under protective order of confidential information submitted by such interested parties, other than domestic price and cost of production data, the Secretary may make such confidential information available to an attorney of such an interested party, excepting in-house counsel, under a protective order described in paragraph (b). The Secretary may adopt, from time to time, forms for submitting requests for disclosure pursuant to a protective order incorporating the terms of this rule. The Secretary shall determine whether the requirements for release of information under this rule have been satisfied. The Secretary's determination shall be final for purposes of review by the Customs Court under section 777(c)(2) of the Act.

(b) Protective order. The protective order under which information is made available to the attorney of a party shall require him to submit to the Secretary in a form prescribed by the Secretary a personal sworn statement that, in addition to such other conditions as the Secretary may require, he will:

(1) Not divulge any of the information so obtained and not otherwise available to him, to any person other than

(i) Personnel of the Commission concerned with the proceeding,

(ii) The person or agency from whom the information was obtained,

(iii) An attorney, excepting in-house counsel, employed on behalf of the party requesting the disclosure, and who has furnished a similar statement or

(iv) Those persons independently contracted with, or employed or supervised by, the attorney having a need thereof in connection with the proceeding and who have furnished a similar statement;

(2) Use such information solely for the purposes of the Commission proceeding then in progress or for judicial or Commission review thereof;

(3) Not consult with any person not described in paragraph (b)(1)(iii) or (iv) concerning such confidential information without first having received the written consent of the Secretary and the attorney of the party from whom such confidential information was obtained;

(4) Not copy or otherwise reproduce any confidential material obtained under protective order except in accordance with procedures to be established by the Secretary; and

(5) Report promptly to the Secretary any breach of the protective order.

(c) Final disposition of material released under protective order. Upon completion of a proceeding, or at such earlier date as the Secretary may determine appropriate for particular data, the security of confidential information shall be projected by the return of all copies of materials released to attorneys of parties pursuant to this section and all other materials containing the confidential information, such as charts or notes based on any such information received under protective order, accompanied by a certificate from the attorney to whom the material was disclosed attesting to his personal, good faith belief that no other copies of such materials have been made available to the party he represents or any other person to whom disclosure was not specifically authorized.

(d) Sanctions for breach of protective order. The sworn statement referred to in paragraph (b) shall include an acknowledgment by the person providing it that breach thereof may, for up to seven years following publication of a determination that the order has been breached, subject to being barred from practice in any capacity before the Commission—

(1) The person submitting the statement, and

(2) Such person's partners, associates, employer, and employees.

Any breach of a protective order may be referred to the United States Attorney. In the case of an attorney, accountant, or other professional, such breach also may be referred to the ethics panel of the appropriate professional association, and the offender and the party he represents shall be subject to such other administrative sanctions as the Commission determines to be appropriate, including striking from the record any information or briefs submitted by, or on behalf of, the party represented by the offender.

(e) Sanction procedures. The Commission shall determine whether any person has violated a protective order, and may impose sanctions in accordance with paragraph (d). Any person against whom a sanction is proposed to be applied shall be afforded a reasonable opportunity to be heard before the determination is made.

§ 207.8 Questionnaires to have the force of subpoenas; subpoena enforcement.

Any questionnaire issued by the Commission in connection with any proceeding under section 303 or title VII of the Act may be issued as a subpoena and subscribed by a Commissioner,
after which it shall have the force and effect of a subpoena authorized by the Commission. Whenever any party or any other person fails to respond adequately to such a subpoena or whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, the Commission may (a) use the best information otherwise available in making its determination; (b) seek judicial enforcement of the subpoena pursuant to 19 U.S.C. 1333; (c) take such other actions as are necessary and appropriate, including waiver of any time limitation set forth in this part, as necessary to obtain needed information; or (d) any combination of the above.

§ 207.9 Affirmative determinations by divided Commission.
If the Commissioners voting on a determination by the Commission under section 303 or Title VII of the Act are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph, when the issue before the Commission is to determine whether there is, whether there would be, or whether there is a reasonable indication of—
(a) Material injury to an industry in the United States,
(b) Threat of material injury to such an industry, or
(c) Material retardation of the establishment of an industry in the United States, by reason of imports of the merchandise, an affirmative vote by any Commissioner on any of the issues shall be treated as a vote that the determination should be affirmative.

Subpart B—Preliminary Determinations

§ 207.10 Filing of petition with Commission.
Any interested party who files a petition with the administering authority pursuant to section 702(b)(1) or 732(b)(1) of the Act shall in accordance with section 702(b)(2) or 732(b)(2) of the Act file a copy of the petition with the Secretary of the Commission on the same day as the petition is filed with the administering authority.

§ 207.11 Contents of petition.
The petition shall allege the elements necessary for the imposition of a duty under section 701(a) or 731 of the Act and contain information reasonably available to the petitioner supporting the allegations. See § 207.26 for a list of factors relating to injury considered by the Commission. If the petition alleges critical circumstances, it shall also contain information reasonably available to the petitioner in support of the findings required to be made by the Commission pursuant to sections 705(b)(4)(A) and 735(b)(4)(A) of the Act. Petitioners are advised to refer to the administering authority’s regulations concerning the contents of petitions.

§ 207.12 Notice of investigation of reasonable indication of injury.
Upon receipt by the Commission of a petition under § 207.10 or receipt of notice that the administering authority has commenced an investigation under section 702(a) or 732(a) of the Act, the Director shall, as soon as practicable after consultation with the administering authority, institute a preliminary investigation to determine whether there is reasonable indication of injury under section 702(a) or 732(a) of the Act and shall publish a notice to that effect in the Federal Register.

§ 207.13 Cooperation with administering authority; preliminary investigation.
Subsequent to institution of an investigation pursuant to § 207.12, the Director shall conduct such investigation as he deems appropriate. Information adduced in the investigation shall be placed on the record. The Director shall cooperate with the administering authority in its determination of the sufficiency of a petition and in its decision whether to permit any proposed amendment to a petition.

§ 207.14 Negative petition determination.
Upon receipt by the Commission of notice from the administering authority under section 702(d) or 732(d) of the Act that the administering authority has made a negative petition determination under section 702(c)(3) or 732(c)(3) of the Act, the investigation begun pursuant to § 207.12 shall terminate. The Director shall notify all persons who have requested requests for information from him of the termination.

§ 207.15 Written statements and conference.
Any person may submit to the Commission on or before a date specified in the notice of investigation issued pursuant to § 207.12 a written statement of information pertinent to the subject matter of the investigation. If he deems it appropriate, the Director shall hold a conference pursuant to § 207.12(a). The conference, if any, shall be held after notice thereof is served on the parties and published in the Federal Register and shall be transcribed. Notwithstanding the foregoing, the Commission may decide to hold a hearing in lieu of the Director’s holding of a conference.

§ 207.16 Recommendation of Director.
The Director shall submit to the Commission his recommendation based on the record concerning the existence of a reasonable indication of injury under section 703(a) or 733(a) of the Act.

§ 207.17 Determination by Commission of reasonable indication of injury.
Except in the case of a petition dismissed by the administering authority under section 702(c)(3) or 732(c)(3) of the Act, the Commission, within 45 days after the date on which a petition is filed under section 702(b) or 732(b) of the Act or on which it receives notice from the administering authority of an investigation commenced under section 702(a) or 732(a) of the Act, shall make a preliminary determination based upon the best information available to it at that time of whether there is reasonable indication of injury by reason of imports of the merchandise which is the subject of the investigation by the administering authority.

§ 207.18 Notice of preliminary determination.
The Commission shall notify the petitioner, other parties to the investigation, and the administering authority of its preliminary determination under section 703(a) or 733(a) of the Act and of the facts and conclusions of law upon which the determination is based, and it shall publish a notice of its determination in the Federal Register. If the Commission’s preliminary determination is negative, the investigation shall be terminated. If the Commission’s preliminary determination is affirmative, the Director may continue investigative activities pending notice by the administering authority of its preliminary determination under section 703(b) or 733(b) of the Act. If the administering authority’s preliminary determination is affirmative, the Commission shall institute an investigation in accordance with subpart C. If the administering authority’s preliminary determination is negative, the Director shall continue such investigative activities as he deems appropriate pending a final determination by the administering authority under section 703(a) or 733(a) of the Act.
Subpart C—Final Determinations

§ 207.20 Notice of investigation.
Upon receipt of notice from the administering authority of an affirmative preliminary determination under section 703(b) or 733(b) of the Act or, if the administering authority's preliminary determination is negative, of an affirmative final determination under section 705(a) or 735(a) of the Act, the Commission shall publish in the Federal Register a notice of its investigation to reach a final determination under section 705(b) or 735(b) of the Act. Upon receipt by the Commission of notice from the administering authority of its negative final determination under section 705(a) or 735(a) of the Act, the corresponding Commission investigation shall terminate.

§ 207.21 Staff report.
(a) The Director shall prepare and place in the record a staff report containing preliminary findings of fact. Portions of the staff report containing confidential or privileged information will be placed in the nonpublic record, and the remainder of the staff report including a nonconfidential summary of the confidential or privileged portions, will be placed in the public record.

(b) (1) 75-day investigations.—In injury investigations that are to be completed within 75 days, namely, (i) Injury investigations following an affirmative preliminary determination by the administering authority after a negative preliminary determination by the administering authority (§ 207.25(c)), (ii) Investigations to review agreements to eliminate injurious effect of this rule before the later of—

§ 207.22 Prehearing statement.
Within 15 days after the date of service by the Commission to the parties of the public portion of the staff report, each party shall submit to the Commission a prehearing statement. A prehearing statement shall, to the extent possible, refer to the record and shall include:

(a) Exceptions, if any, to the preliminary findings of fact contained in the staff report;
(b) Any additional or proposed alternative findings of fact;
(c) Procedures, the basis of law; and
(d) Any other information and arguments which the party believes relevant to the subject matter of the Commission's determination under section 705(b) or 735(b) of the Act.

§ 207.23 Hearing.
(a) In general. The Commission shall hold a hearing in the course of an investigation upon the written request of any party to the investigation, or at its own instance, before making a final determination under section 705(b) or 735(b) of the Act, and such request must be received by the Commission within 15 days after the date of publication in the Federal Register of the notice of investigation under this subpart.

(b) Procedures. Any such hearing shall be conducted after notice published in the Federal Register. The hearing shall not be subject to the provisions of Subchapter II, Chapter 5, Title 5, United States Code, or to section 702 of that title. Any person desiring to appear at a hearing shall notify the Secretary not later than five (5) days prior to the date of the hearing. Each party shall limit its presentation at the hearing to a nonconfidential summary of the information and arguments contained in its prehearing statement, to a nonconfidential analysis of the information and arguments contained in the prehearing statements required by § 207.22, and to information not available at the time its prehearing statement was filed. Each other person appearing shall limit its presentation at the hearing to a brief statement of its position with respect to the subject matter of the investigation. Hearings shall be subject to § 201.12, with the exception of paragraph (g) thereof.

§ 207.24 Posthearing submissions.
Posthearing briefs concerning the information adduced at the hearing may be filed with the Secretary within a time specified by the official presiding at the hearing, provided that no such posthearing brief shall exceed 10 pages of textual material, double spaced, on 8% x 11 inch stationery. In addition, the presiding official may permit persons to file within a specified time statements responsive to questions or requests made by the Commission at the hearing. Posthearing submissions which do not accord with this rule will not be accepted.

§ 207.25 Final determination by the Commission.
(a) In General. At the times specified below, the Commission shall make a final determination of whether—
(1) An industry in the United States is materially injured, or
(2) The establishment of an industry in the United States is materially retarded.

(b) Period for injury determination following affirmative preliminary determination by administering authority. If the preliminary determination by the administering authority under section 703(b) or 735(b) of the Act is affirmative, then the Commission shall make the determination required by paragraph (a) of this rule before the later of—
[1] The 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 735(b) or 733(b) of the Act, or
[2] The 45th day after the day on which the administering authority makes its affirmative final determination under section 735(a)(1) or 735(a)(1) or (2) of the Act.

(c) Period for injury determination following negative preliminary determination by administering authority. If the preliminary determination by the administering authority under section 703(b) or 733(b) of the Act is negative, and its final determination under section 703(a)(1) or 735(a)(1) or (2) of the Act is affirmative, then the final determination by the Commission under this section shall be made within 75 days after the date of the administering authority's affirmative final determination.

(d) Certain additional findings. (1) If the finding of the administering authority as to critical circumstances under section 705(a)(2) of the Act is affirmative, then the final determination of the Commission shall include findings as to whether—
   (i) There is material injury which will be difficult to repair, and
   (ii) The material injury was by reason of such massive imports of the subsidized merchandise over a relatively short period.

(2) If the finding of the administering authority under section 735(a)(3) of the Act concerning critical circumstances is affirmative, then the final determination of the Commission shall include a finding as to whether the material injury is by reason of massive imports described in section 735(a)(3) of the Act to an extent sufficient in order to prevent such material injury from recurring, it is necessary to impose the duty imposed by section 731 of the Act retroactively on those imports.

(3) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under sections 705(a) or 735(a) of the Act would have been found but for any suspension of liquidation of entries of the merchandise.

§ 207.26 Factors considered in determination of material injury. (a) In making its determinations under section 705(a), 705(b), 735(a), and 735(b) of the Act, the Commission shall consider, among other factors—

1. The nature of imports of the merchandise which is the subject of the investigation.
2. The effect of imports of that merchandise on prices in the United States for like products, and
3. The impact of imports of such merchandise on domestic producers of like products.

(b) For purposes of paragraph (a)—

1. In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.
2. In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether—
   (i) There has been significant price undercutting by the import, merchandise as compared with the price of like products of the United States, and
   (ii) The effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.
3. In examining the impact on the affected industry, the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to—
   (i) Actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,
   (ii) Factors affecting domestic prices, and
   (iii) Actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.

(c) Special rules for agricultural products. (1) The Commission shall not determine that there is no material injury or threat of material injury to United States producers of an agricultural commodity merely because the prevailing market price is at or above the minimum support price.

(2) In the case of agricultural products, the Commission shall consider any increased burden on government income or price support programs.

(d) For purposes of this section—

1. In determining whether there is a threat of material injury, the Commission shall consider among other factors—
   (1) The rate of increase of subsidized or dumped exports to the U.S. market;
   (2) Capacity in the exporting country to generate exports; and
   (3) The availability of other export markets.

The Commission shall also consider such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement) provided by a foreign country and the effects likely to be caused by the subsidy.

§ 207.27 Standard for determination.

The presence or absence of any factor which the Commission is required to consider under § 207.26 shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury. The term "material injury" means harm which is not inconsequential, immaterial, or unimportant. In determining whether injury is occurring by reason of subsidized or less than fair value imports, the Commission will look at the effects of such imports on the domestic industry as set forth in § 207.26. The Commission will also take into account information presented to it or that it obtains, if any, demonstrating that the harm attributed by the petitioner to subsidized or less-than-fair-value imports is attributable to factors other than those listed in § 207.26, including volume and prices of nonsubsidized imports or imports not sold at less than fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry. The effects from the subsidized or less than fair value imports will not be weighed against the effects associated with other factors which may be contributing to overall injury to an industry. Nor will the petitioner be required to prove the negative, that is, that material injury is not caused by such other factors.

§ 207.28 Publication of notice of determination.

Whenever the Commission makes a final determination under section 303 or title VII of the Act, it shall notify the petitioner, other parties to the investigation, and the administering authority of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.
Subpart D—Transition

§ 207.30 Pending investigations and existing countervailing duty orders.

(a) Investigations in progress at the administering authority as of the effective date. If, as of the effective date, there is an investigation in progress under section 303 of the Act as to whether an industry in the United States is being, or is likely to be, injured by reason of imports of merchandise subject to a countervailing duty order issued pursuant to a countervailing duty order if the order were to be revoked. The request shall set forth the person, persons, or government making the request; the order as to which the request is made; the relief sought; the factual basis therefor; and other factors as generally in compliance with part 201 of these rules. In addition, the Director may prescribe a form for making such requests, which shall be completed if available, and which may require information that the Director considers necessary to conduct the investigation. The Commission determination in such investigations shall be made within 3 years of the date of the receipt of the request that caused the Commission to investigate. Within 10 days after the filing of a request under this subsection, the Secretary shall notify the administering authority of the order or orders that are the subjects of the request. The Secretary will also transmit to the administering authority the Commission determination in investigations under this section, and publish notice thereof in the Federal Register.

§ 207.31 Scheduling the institution of investigation of certain unwaved investigations.

Among the factors considered by the Commission for establishing priorities of institution among requests under § 207.30(d) when the work before the Commission is such as to make immediate investigation in such cases impractical are:

(a) The trade interests of the United States;
(b) The length of time a countervailing duty order has been in effect (longest first);
(c) The volume of trade of the product in question; and
(d) The appropriateness of consolidation of investigations relating to like products.

§ 207.32 Procedures for pending investigations.

The procedures set forth in subpart B of this part, including applicable time limitations, shall apply to all investigations requiring a preliminary determination within 45 days. All other investigations described in this Subpart D shall comply with the procedures, including applicable time limitations, set forth in subpart C of this part.

Subpart E—Terminated, Suspended, and Continued Investigations, Investigations To Review Negotiated Agreements, and Investigations To Review Outstanding Determinations

§ 207.40 Termination and suspension of investigation.

(a) An investigation under title VII may be terminated by the Commission by giving notice in the Federal Register to all parties to the investigation, upon withdrawal of the petition by the petitioner. The Commission may not terminate an investigation, however, before a preliminary determination is made by the administering authority under section 703(b) or section 733(b) of the Act.
(b) Upon receipt of a notice of suspension of an investigation by the
administering authority under section 704(b) or 734(b), the Secretary shall issue a notice of suspension of the Commission investigation. Such suspension shall not prevent the Director from conducting such other investigative activities as he deems appropriate with respect to the same matter.

(c) Resumption of suspended investigation. (1) Purpose. If the administering authority determines that an agreement described in subsection 704(b) or (c) or subsection 734(b) or (c) of the Act is being, or has been violated, or no longer meets the requirements of section 704 or 734 of the Act (other than the requirement under subsections 704(c)(1) and 734(c)(1) of complete elimination of injury) and so notifies the Commission of its determination and, in the event that the investigation suspended by the agreement was not terminated, the Commission shall resume the investigation as if this determination of the administering authority were an affirmative preliminary determination under subsection 703(b) or 733(b) of the Act.

(2) Period for injury determination. The Commission shall make its final determination in conformity with the schedule established in § 207.25(b).

(3) Procedures. The procedures set forth in subpart C applicable to investigations requiring completion within 120 days shall apply to all investigations instituted under this § 207.40.

§ 207.41 Commission review of agreements to eliminate the injurious effect of subsidized imports or imports sold at less than fair value. If the administering authority determines to suspend an investigation upon acceptance of an agreement to eliminate the injurious effect of imports of the merchandise which was the subject of the suspended investigation is eliminated completely by the agreement. Petitions may be filed by a party to the investigation which is an interested party described in subparagraph (3), (4), or (6) of § 207.34(h). Investigations under this § 207.41 shall be completed within 75 days of their initiation.

§ 207.42 Investigation continued upon request. Upon receipt of advice from the administering authority that it has received a request for the continuation of a suspended investigation pursuant to section 704(g) or 734(g) of the Act, the Commission shall continue the investigation. The procedures set forth in subparts B and C of this part, including applicable time limitations, shall apply to all continued investigations within this rule.

§ 207.43 Commission determination in investigations to review agreements and in continued investigations.

(a) Purpose. In making a final determination in investigations to review agreements described in § 207.41 or in continued investigations described in § 207.42, the Commission shall consider all of the circumstances which is the subject of the investigation.

(b) Procedures. The procedures set forth in subpart C applicable to investigations requiring completion within 120 days shall apply to all investigations instituted under this § 207.45.

§ 207.44 Consolidation of investigations.

(a) Purpose. Upon the receipt of information concerning, or upon a request for the review of, a determination concerning a suspension agreement accepted under section 704(g) or section 734(g) of the Act or an affirmative determination made under section 704(h)(2), 705(b), 734(h)(2), or 735(b) of the Act, or under the Antidumping Act or section 530(b) of the Act, which shows changed circumstances sufficient to warrant a review of such determination, the Commission shall institute an investigation to determine, as the case may be, (1) whether, in light of the alleged changed circumstances, the agreement continues to eliminate completely the injurious effect of imports of the merchandise; or (2) whether changed circumstances exist which indicate that an industry in the United States would not be threatened with material injury, or the establishment of such an industry would not be materially retarded, if the countervailing duty order or antidumping order were modified or revoked. In the absence of good cause shown, no investigation under this § 207.45 shall be instituted within 24 months of the date of publication of the notice of the suspension or determination.

(b) Procedures. The procedures set forth in subpart C applicable to investigations requiring completion within 120 days shall apply to all investigations instituted under this § 207.45.

§ 207.45 Investigation to review outstanding determination.

(a) Purpose. Upon the receipt of information concerning, or upon a request for the review of, a determination concerning a suspension agreement accepted under section 704(g) or section 734(g) of the Act or an affirmative determination made under section 704(h)(2), 705(b), 734(h)(2), or 735(b) of the Act, or under the Antidumping Act or section 530(b) of the Act, which shows changed circumstances sufficient to warrant a review of such determination, the Commission shall institute an investigation to determine, as the case may be, (1) whether, in light of the alleged changed circumstances, the agreement continues to eliminate completely the injurious effect of imports of the merchandise; or (2) whether changed circumstances exist which indicate that an industry in the United States would not be threatened with material injury, or the establishment of such an industry would not be materially retarded, if the countervailing duty order or antidumping order were modified or revoked. In the absence of good cause shown, no investigation under this § 207.45 shall be instituted within 24 months of the date of publication of the notice of the suspension or determination.

(b) Procedures. The procedures set forth in subpart C applicable to investigations requiring completion within 120 days shall apply to all investigations instituted under this § 207.45.

§ 207.46 Modification, clarification, or correction of a determination.

(a) Purpose. Upon the receipt of information concerning, or upon a request for the review of, a determination concerning a suspension agreement accepted under section 704(g) or section 734(g) of the Act or an affirmative determination made under section 704(h)(2), 705(b), 734(h)(2), or 735(b) of the Act, or under the Antidumping Act or section 530(b) of the Act, which shows changed circumstances sufficient to warrant a review of such determination, the Commission shall institute an investigation to determine, as the case may be, (1) whether, in light of the alleged changed circumstances, the agreement continues to eliminate completely the injurious effect of imports of the merchandise; or (2) whether changed circumstances exist which indicate that an industry in the United States would not be threatened with material injury, or the establishment of such an industry would not be materially retarded, if the countervailing duty order or antidumping order were modified or revoked. In the absence of good cause shown, no investigation under this § 207.45 shall be instituted within 24 months of the date of publication of the notice of the suspension or determination.

(b) Procedures. The procedures set forth in subpart C applicable to investigations requiring completion within 120 days shall apply to all investigations instituted under this § 207.45.

§ 207.47 Modification, clarification, or correction of a determination.

(b) Transmital of record. In the event a Commission determination is appealed to the U.S. Customs Court, a copy of the record in the proceeding before the Commission, as such record is defined in § 207.2(j), or a certified list of all items therein, will be transmitted to the Court by the Secretary in accordance with the rules of the court.
Conforming Amendments

The following changes are made in Part 201 of title 19 of the Code of Federal Regulations:

§ 201.1 [Amended]
1. Substitute the words "202 through 207" for the words "202 and 207" where they appear in § 201.1.

§ 201.2 [Amended]
2. Add new paragraphs (f), (g), and (h) to § 201.2 as follows—
   (g) "Rule" means a section of the Commission Rules of Practice and Procedure (19 CFR Chapter II).
   (h) "Secretary" means the Secretary of the Commission.

3. Revise § 201.7 to read as follows:

§ 201.7 Investigative authority and initiation of investigations.
   (a) Investigative authority. In order to expedite the performance of its functions, the Commission may engage in investigative activities preliminary to and in aid of any authorized investigation, consolidate proceedings before it, and determine the scope and manner of its proceedings;
   (b) Initiation of investigations.
   Investigations may be initiated by the Commission on its own motion, upon request of the President or the Special Representative for Trade Negotiations, upon resolution of the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, upon resolution of either branch of Congress, or upon application, petition, complaint, or request of private parties, as required or provided for in the pertinent statute, Presidential proclamation, Executive order, or in this chapter.

§ 201.9, 201.11 and 201.12 [Amended]
4. Substitute the word "information" for the word "evidence" where it appears in § 201.9, § 201.11(c), § 201.12(e), and § 201.12(g);
5. Add in § 201.12(a) the words "or conferences" after the term "hearings" in each place such term is used.
6. Substitute in § 201.12(d) the words "not less than 3 business days prior to the hearing" for the words "three business days prior to the hearing or as close to actual presentation at the hearing as possible."
7. Substitute "[(h) Hearing transcripts."
   for "[(f) Hearing transcripts."
   in § 201.12.
8. Add a new paragraph (i) to § 201.12 as follows—

§ 201.12 Conduct of nonadjudicative hearings.
   (i) Requests. Any party to a nonadjudicatory investigation may request the Commission to take particular action with respect to any aspect of an investigation. Such requests shall be by letter addressed to the Secretary, shall be placed by him in the record, and served on all other parties. The Commission shall take such action or make such response as it deems appropriate.

§ 201.13 [Amended]
9. Delete from § 201.13(a), the language "for the purpose of appearing at a public hearing."

[FR Doc. 79-20283 Filed 12-21-79; 8:45 am]
BILLING CODE 7025-02-M
DEPARTMENT OF COMMERCE
International Trade Administration
19 CFR Part 355
Countervailing Duties
AGENCY: International Trade Administration.
ACTION: Final rules and request for comments.

SUMMARY: These regulations replace the Customs Regulations relating to countervailing duties in order to effect the changes made in the countervailing duty law by the Trade Agreements Act of 1979 and Reorganization Plan No. 3 of 1979. The countervailing duty regulations were previously contained in 19 CFR 159.47, which is being deleted by the U.S. Customs Service in a separate document. The new regulations will be contained in a new chapter of title 19, chapter 3, and specifically in part 355 of title 19.

The principal change in the countervailing duty law effected by the Trade Agreements Act of 1979 is the introduction of a “material injury” test for products from countries which assume the obligations of the Agreement on Subsidies and Countervailing Measures.

Other significant changes include the acceleration of countervailing duty proceedings; greater public participation in, and access to, information developed during investigations and during the assessment phase of proceedings; and prompter and more effective application of provisional measures to imports during the course of an investigation. These changes in the law require that conforming amendments be made to the regulations.


ADDRESSES: Send comments to Assistant Secretary for Trade Administration, Room 3850, Department of Commerce, Washington, D.C. 20230. Written comments available for public inspection during regular business hours at Room 3100, Department of Commerce, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: C. Christopher Parlin, James Lyons or Jan White Foley, Office of General Counsel, Department of Commerce, Washington, D.C. 20230; 202-377-4772.

SUPPLEMENTARY INFORMATION: Proposed regulations on countervailing duties were published on October 3, 1979, with comments due on November 19. The Department has determined for good cause pursuant to section 553(B) of title 5 of the United States Code (5 U.S.C. 553(d)(3)). That further notice and public procedure prior to the effective date of these final regulations are impracticable, unnecessary, and contrary to the public interest. The final regulations issued today are necessary for the administration of the countervailing duty law and, consequently, will be effective immediately upon publication.

The Department of Commerce is deferring publication of final regulations on issues covered by certain sections of the proposed regulations of the Customs Service, published in the Federal Register on October 3, 1979. Additional written comments (in triplicate) with respect to those proposed provisions may be submitted until February 29, 1980. They should be addressed to the Assistant Secretary for Trade Administration, Room 3850, Department of Commerce, Washington, D.C. 20230.

Written comments submitted will be available for public inspection during regular business hours at Room 3100, Department of Commerce, Washington, D.C.

Background

The provisions of the former Customs Regulations relating to countervailing duties were based on section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303), in view of the changes made to the Tariff Act of 1930 by Title I, subtitles A, C and D (countervailing duties) of the Trade Agreements Act of 1979, Public Law 96-39, effective January 1, 1980, and the changes effected by Reorganization Plan No. 3 of 1979 (44 FR 62273, December 3, 1979), effective January 1, 1980, certain conforming amendments to be made to the regulations relating to countervailing duties. Certain changes or additions to the former regulations are also necessary to implement the Statements of Administrative Action which were approved by Congress in enacting the Trade Agreements Act of 1979.

On October 3, 1979, the United States Customs Service, Department of the Treasury, proposed amendments to the Customs Regulations relating to countervailing duties and invited public comment on the proposed regulations. Since that time Reorganization Plan No. 3 of 1979 and Executive Order 12188 have effected the transfer to the Secretary of Commerce of all functions of the Department of the Treasury pursuant to section 303 and Title VII (including section 771(1), which defines the administering authority) of the Tariff Act of 1930, except for certain functions reserved to the Customs Service.

In anticipation of the transfer effected by the Plan, the Department of Commerce and the Department of the Treasury have jointly reviewed and considered all comments received on the proposed regulations and have jointly prepared the final regulations. The Trade Agreements Act of 1979 requires the Department of Commerce to issue regulations necessary or appropriate to carry out its countervailing duty responsibilities by January 1, 1981. However, in order for the Department of Commerce to conduct its countervailing duty program, it is necessary for some regulations to be effective as soon as possible after the effective date of Title I of the Act, January 1, 1980. These regulations follow. The Department of Commerce anticipates that as experience is gained in administering its new countervailing duty program, the Department will continue to evaluate these regulations, and, when appropriate, will propose amendments to them. The Department will consider written comments on the regulations published below.

The Department of Commerce is deferring publication of final regulations on issues covered by certain sections of the proposed regulations of the Customs Service published in the Federal Register on October 3, 1979; principally those provisions relating to the proposed Subpart A respecting the determination and calculation of net subsidy and specifically sections 155.1, 155.2, 155.3, 155.4, 155.7(d), 155.51, 155.60, 155.61, 155.62, 155.63, and 155.64. Final regulations on these issues are not necessary immediately for the conduct of the countervailing duty program. Moreover, these issues are complex, and the Department desires to have experience as possible on these issues prior to publishing final regulations. Additional written comments are invited on these sections. Such comments should be sent to the address indicated above and must be received by February 29, 1980.

In the Background section of the notice of proposed rule making published by the Customs Service, five specific administrative and interpretative guidelines were proposed to be continued. Subject to continuing review and publication in the Federal Register of any change therein, they are hereby provided as statements of policy and interpretation for public guidance and appear as Annex 1 to the regulations which follow. With regard to the first such guideline, the physical incorporation test, the wording has been revised to make it clear that this test is not applied in connection with the non-
excessive rebate or remission, upon exportation, of indirect taxes imposed directly upon the exported product, such as sales taxes, value-added taxes, or commodity taxes. The rebate or remission of such taxes is not considered a subsidy. A change has been made in the fourth guideline by deleting the last sentence. The deleted sentence raised two problems. First, it implied that in determining whether a rebate or reduction of direct taxes is a subsidy, the form of the tax provision would be decisive—i.e., whether the rebate or reduction is universally applicable. This ignored the possibility that while a practice could as a formal matter be universal, it could in fact apply only to a particular enterprise or industry. The second problem was the implication that a tax reduction or rebate which does not apply to all sectors is necessarily a subsidy. This might not be the case if, as with a depletion allowance, a type of tax practice is accepted as appropriate for only a particular sector (e.g., an extractive industry). The Department intends to revise this list from time to time in the future. Further, it should be noted that the list is not intended to be an exhaustive compilation of all procedures or practices followed in determining the existence or size of a subsidy. It is a list of major practices which have been or are expected to be followed, and it is published to provide as much general guidance as possible at this time.

Annex 2 lists countries under the Agreement on Subsidies and Countervailing Measures. This Annex is published in response to the comment that the effects of countries under the Agreement should be periodically published.

Annex 3 list the outstanding countervailing duty orders which are currently in effect.

On November 15, 1979, the President directed Executive Departments and Agencies to ensure that federal regulations will not place unnecessary burdens on small businesses and organizations. The President's memorandum was issued after publication of the proposed regulations on countervailing duties and preceded the close of the comment period by only three days. To comply with the President's memorandum, the Departments of Commerce and the Treasury have examined the written comments of small businesses and have attempted to incorporate these comments in the regulations published below. Moreover, the Departments have introduced some flexibility into the regulations in order to minimize the burden on small businesses and organizations. A section was added inviting persons intending to file petitions to seek from the Department of Commerce information on the requirements for petitions prior to filing. A provision was added to waive, when unduly burdensome, the requirement that parties serve written comments on all other parties. In at least one case, a comment was rejected because of the burden to petitioners, particularly small businesses. This comment suggested requiring the petitioner to give notice of its filing to all parties named in the petition.

However, because the comment period was almost closed at the time of the President's directive to minimize unnecessary regulatory burdens on small businesses, the Department of Commerce now invites written comments specifically on the effect on small businesses and organizations of the regulations published below as well as the sections enumerated above upon which final action is being deferred. Written comments should be sent to the address listed above and must be received by February 29, 1980. The Department of Commerce will analyze these comments and, if appropriate, publish proposed or final amendments reflecting these comments.

In formulating the regulations published below, the Departments of Commerce and the Treasury have considered all written comments received as well as the testimony which was presented at the November 8, 1979, conference relating to the proposed countervailing duty regulations. Some comments went beyond the scope of this rulemaking or urged changes inconsistent with the Act. These suggestions have not been incorporated. Some comments addressed matters more appropriately addressed by the U.S. International Trade Commission; these were referred to the Commission. A number of comments suggested that the final regulations make clear which sections do not apply to dutiable merchandise from a country not a country under the Agreement as defined in section 701(b) of the Act (19 U.S.C. 1671(b)) (hereinafter referred to as "non-agreement country"). These suggestions were incorporated. Some comments urged a degree of specificity considered inappropriate for regulations and were rejected on that basis.

A number of comments stated that the deadlines are too short for submissions, by parties, for resubmitting confidential requests, for alleging critical circumstances, and for presenting written views prior to a final determination. While sympathetic to these views, the Department has not incorporated the suggested changes because any additional time granted to parties would impair the ability of the Department of Commerce to meet the deadlines imposed by the Act.

A section-by-section analysis of the comments follows:

1. Section 355.0 Scope. This section delineates the scope of Part 355 and indicates in what respects an investigation of dutiable merchandise from a non-agreement country pursuant to section 303 of the Tariff Act of 1930 shall differ from a countervailing duty investigation conducted under Title VII of the same Act. The section remains unchanged except that it now explicitly states that inquiry information shall not be required in a petition relating to dutiable merchandise from a non-agreement country. This section also provides that determinations by the Secretary under the Tariff Act of 1930 shall not be considered major federal actions significantly affecting the environment within the meaning of the National Environmental Policy Act of 1969, as amended, or relevant Executive Orders.

2. Sections 355.1 through 355.4. The publication of final regulations affecting those issues developed in the corresponding provisions of the proposed rulemaking is being deferred. Section 355.5 pertaining to the definition of "Agreement on Subsidies and Countervailing Measures," has been deleted and the contents of that provision included in § 355.7(j).

3. Section 355.6 "Definition of Countervailing Duty Proceeding," "Investigation," "Determination" and "Order." This provision remains unchanged except for technical amendments.

4. Section 355.7, Other Definitions. Comments suggested that there be a deadline for the filing of requests to become a party to the proceeding, provided that later intervention would be allowed for good cause. The essence of these comments were adopted. One comment suggested that the regulations provide guidance on how member countries of a customs union will be treated when the factual situations of the subsidies vary among member countries. Although the regulations do not address this subject, the Department anticipates taking such variations into account by considering the benefits actually provided by each participating member country.

5. Section 355.15 Information Generally Available. One commenter suggested that the first sentence of
subsections (a) be amended so that the reference to material submitted or collected be limited to "by any interested party." Since the statutory provision on the record for judicial review deals with "all information presented to or obtained by the Secretary" (Section 516A(b)(2)(A)(i), Tariff Act of 1930, as amended by section 1001(a), Omnibus Trade Agreements Act of 1979, 93 Stat. 302 [19 U.S.C. 1515(a)], it was not considered appropriate to make this change. Two technical changes have been made in subsection (a). It was determined that instead of merely citing the statutory provision on contents of the record for review, the statutory criteria should be spelled out. It was also determined that the last sentence in subsections (a) should be part of subsection (b).

6. Section 355.18 Ex Parte Meetings. Several commenters suggested that the record of ex parte meetings should contain, in addition to the identity of the persons present, the date, time and place of the meeting. This suggestion has been adopted. It was also suggested that the regulation identify the party responsible for preparing the memorandum of the meeting. This suggestion also has been adopted—the regulation now indicates that normally the memorandum for the record will be prepared by one of the Government participants; of course, in light of §355.34(a) ("submission of information and written views") private parties who participate in such meetings may submit their own summaries. Another commenter objected to the materiality requirement in the first sentence. This suggestion has not been adopted. Since the requirements of memoranda for the record of ex parte meetings are to ensure that parties to the proceeding are fully aware of the presentation of information during an investigation and for purposes of judicial review of determinations made during a countering duty investigation, it was determined that the limitation to "factual information material to a determination" was proper and appropriate.

7. Section 355.17 Confidentiality Maintained. In response to a comment that this section of the proposed regulations was more appropriately situated in another section, the material has been deleted and so transferred. Several commenters objected to the first sentence of the proposed regulation. They pointed out that unlike all other situations involving information submitted under a request for confidential treatment, this section contained no provision for notifying the submittor of the intent to disclose such information and providing an opportunity to withdraw it rather than have it disclosed. The revised provision (in §355.18(e)) clearly indicates that notification will be given and an opportunity to withdraw the material provided in all instances where a request for confidential treatment is not granted. The transferred material has been replaced with language dealing with the maintenance of confidentiality of information designated as confidential by the person submitting it.

8. Section 355.19 Requests for Confidential Treatment of Information. One commenter objected to the provision of a 10% band for approximated presentation of confidential information, stating it was not large enough where the numbers involved are small. While such a problem may exist in a small number of cases, it has been determined that, on balance, use of a wider band would have the effect much more often of excessively distorting the nonconfidential summary. Accordingly, the comment has not been adopted. Another commenter stated that subsection (a)(3) could result in less information being made available than under the former Customs Regulations since only a brief non-confidential summary is required to accompany an agreement to permit disclosure under an administrative protective order. Where such an order is granted, parties other than those whose attorneys or other representatives are granted access will have only the less detailed non-confidential summary. This is an inevitable result of the protective order mechanism; it was determined to be inappropriate to require a more detailed summary in such cases. However, the comment was adopted with respect to situations where the request for an order is denied. Accordingly, the regulation has been amended to indicate that where the request for a protective order is denied, a nonconfidential summary conforming to the requirements of subsection (a)(1) or a statement under subsection (a)(2) shall be required, except where, in unusual circumstances, a less detailed summary is permitted. Two commenters objected to the provision in subsection (b) that nonconforming requests be returned to the submitter; they felt that this subsection should contain the same provision for notification of the submitter and opportunity to correct as is contained in new subsection (e). This suggestion has not been adopted. Subsection (b) is concerned with procedurally deficient requests for confidential treatment (including inadequate nonconfidential summarization), while new subsection (e) deals with the substantive question of the effect of a determination that information does not warrant confidential treatment. Thus, the mechanics for each situation are appropriate—rejection of a nonconforming request under subsection (b) and notification and opportunity to withdraw under (e). Of course, a request rejected under subsection (b) may always be resubmitted, as long as the resubmission is timely. Several commenters objected to this provision and requested that a 10-day period always be permitted for resubmission. This suggestion has not been adopted. Under the short time limits of the new Act it would be exceedingly burdensome automatically to permit a 10-day resubmission period. Thus, it has been determined that the language "belated submissions may be rejected... should be maintained; of course, since the word "may" is used, where feasible and appropriate, extensions for resubmission will be within the discretion of the Secretary.

Several commenters stated that subsection (c) should be amended to provide that unless a request for confidential treatment is denied within 10 days, the request should be deemed accepted. This suggestion has not been adopted. The rights of other interested parties to review information not truly warranting confidential treatment should not be defeated by the automatic granting of such treatment for any reason not relevant to the content of such information. The regulation has been amended, however, to provide that normally a determination on whether to grant a request for confidential treatment will be made within 16 working days. Subsection (d) has been split into two subsections for purposes of clarity—dealing with where the request for confidential treatment is granted and where it is denied, respectively. In new subsection (e), which covers the situation where requests are denied, the material originally in the first sentence of §355.17 of the proposed regulations has been relocated.

9. Section 355.19 Standards for Determining Confidentiality of Information. One commenter objected to inclusion of "ordinarily" in subsection (a). The comment was not accepted because it was determined that particular circumstances (e.g., public disclosure of the same information elsewhere) might make it inappropriate to grant confidential treatment. Several
commenters asserted that information from domestic interested parties regarding the operations of foreign interested parties should not be accorded confidential treatment. This comment has been accepted in part—subsection (b) has been amended to provide that such information will not be accorded confidential treatment except to the extent that it might disclose the identity of confidential sources used by the domestic interested parties. This revision is being made because it is recognized that knowledge of allegations by domestic interested parties is a vital element in the attempt by foreign interested parties to establish they are not engaged in the complained-of unfair trade practices. One commenter stated that the identity of sources should never be publicly disclosed. This comment was not accepted. Under subsection (c)(6) the identity of sources can be protected where requested and approved. No change from this standard is warranted.

10. Section 355.20 Limited Disclosure of Certain Confidential Information Under an Administrative Protective Order: Numerous commenters suggested that only attorneys should be eligible for disclosure under an administrative protective order; several of the commenters urged further limitation—to outside counsel. Neither suggestion has been adopted. In the Statement of Administrative Action accompanying the Trade Agreements Act of 1979, the Administration stated that generally disclosure under administrative protective order would be made only to attorneys. (House Doc. No. 96-153, Part II, 96th Cong., 1st Sess. 437 (July 19, 1979).) Use of "generally" precludes absolute limitation to attorneys. Of course, business confidential information from foreign firms concerning prices of actual transactions, production and distribution costs, and names of particular customers and suppliers is vital in countervailing duty proceedings. Such information is considered highly confidential, and will be provided only if those submitting it believe that it is, and it is in fact, exceedingly unlikely that such information will be disclosed to persons who should not have access (primarily competitors). Accordingly, the Department will grant administrative protective orders only where it is convinced that the requesting person will be subject to effective sanctions in the event of a breach; normally this will be limited to attorneys who are subject to disbarment.

Numerous commenters also suggested an addition to the regulation indicating that an administrative protective order will be granted only upon a showing of good cause. This suggestion has been adopted. The applicant for an order must demonstrate good cause for release. Further, in determining whether to grant the order the need of the party requesting the information will be weighed against the need of the party submitting it for continued confidential treatment. This balancing test is taken from language in the Senate Report dealing with judicial protective orders. (S. Rep. No. 96-249, 96th Cong., 1st Sess. 100 (1979)). It was considered appropriate to use it with respect to administrative protective orders as well.

Several commenters objected to the absence of provisions for notice of a request for an order and opportunity to comment and for the right to withdraw information rather than have it so disclosed. These suggestions were adopted since these rights are available with regard to information that the Department does not believe to warrant confidential treatment.

Some commenters were concerned that subsection (b)(1)(D) as drafted could permit disclosure under protective order to employees of domestic competitors—the section uses the phrase "...persons employed by or supervised by the attorney or representative...". Clearly, employees of domestic competitors other than counsel should never have such access. The regulation has been amended to so indicate explicitly.

11. Section 355.21 Information Exempt From Disclosure: One commenter suggested that information received from a foreign government should not be "classified" and therefore exempted from disclosure where a foreign government is merely transmitting data received from and prepared on behalf of private sources. This suggestion has not been adopted. Under the terms of Executive Order 12065 the Department is not permitted to disclose information to employees of domestic competitors other than counsel should never have such access. The regulation has been amended to so indicate explicitly.

12. Section 355.25 Procedures for Self-Initiation: Some comments suggested that consulting with a country under the Agreement prior to initiating an investigation under this section might delay initiation of an investigation. The Agreement Relating to Subsidies and Countervailing Measures requires that a country under the Agreement be given an opportunity to consult prior to initiation of an investigation. To accommodate the comments to the extent consistent with this international obligation, this regulation has been changed to require giving such a country an opportunity for consultation prior to self-initiation.

13. Section 355.28 Procedures for Initiation by Petition: Comments suggested that a petitioner should be required to supply documentation on which it relies in making its petition, if reasonably available. This comment was adopted.

One comment suggested that petitioners be required to state the position of other industry members on the petition. This comment was rejected on the grounds that each industry member best knows its own position and should be the source of that information.

Some comments suggested that the petitioner be required to provide notice of its filing to parties named in the petition or, alternatively, that the Secretary publish notice of receipt of a petition. The service requirement was rejected as unduly burdensome to petitioners, particularly small businesses. The suggestion that the Department publish notice of its receipt of a petition was rejected as impracticable within the 20 days allowed by the Act for the sufficiency determination.

One comment suggested that consulting with a country under the Agreement before initiation of an investigation based on a petition. This comment was not adopted because the requirement of notice to the country manufacturing or producing the merchandise in question is considered sufficient.

One comment suggested that the regulation make clear that only the non-confidential copy of the petition will be provided to the representative of the foreign country. This change was made.

14. Section 355.27 Determination of Sufficiency of Petition: One comment suggested that the regulation make clear that the petition is deemed to be filed at the time it is received by the Secretary. This comment was adopted.

15. Section 355.28 Preliminary Determinations: Several amendments have been made in this section to reflect comments received in response to the proposed rulemaking. Paragraph (a) is amended to state that only where the merchandise subject to investigation is from a country which is a country under
the Agreement or is free of duty shall
the Secretary be precluded from making a preliminary determination before the Commission makes a preliminary inquiry determination. Paragraph (c) has been changed to require that a petitioner, when requesting an extension of the period prior to a preliminary determination, set forth the reasons for the request. Without such information the Department shall not be able to satisfactorily rule on the request. Paragraph (d) has been revised to indicate that the posting of a bond or other security should ordinarily be considered adequate to protect the revenue. Whether special bonds ultimately will be required for merchandise subject to a suspension of liquidation in a countervailing duty investigation is a question which must await further review at the administrative level.

16. Section 355.29 Critical Circumstance Determinations. This section remains unchanged.

17. Section 355.30 Termination of Investigation. One comment suggested that the regulations provide that prior to termination the petitioner be required to describe any agreements made and to certify that it is not aware of any others. This suggestion was not incorporated in the regulation. The Secretary has implicit authority to seek this information from the parties as part of his consideration of whether the public interest is served by termination.

18. Section 355.31 Suspension of Investigation. Certain aspects of this section have been further clarified. Paragraph (g) has been amended to indicate the principal criterion which will govern in selecting the most representative period for purposes of establishing a ceiling on the level of imports during the interim period preceding the date on which the subsidy is to be offset or exports discontinued. A number of comments recommended that the representative period not include any time frame during which a subsidy had been granted with respect to the subject merchandise. This recommendation was not adopted because where the subsidy has existed for a substantial period the adoption of the recommendation could compel the Secretary to utilize a time period which is truly unrepresentative. Moreover, the regulations preserve sufficient flexibility so that an intermediate time period other than the six month period ordinarily to be used where circumstances so require. Several other comments questioned whether any authority exists to exclude from entry merchandise imported in excess of the ceiling established pursuant to paragraph (g), Sections 704(d)(2) and (d)(3) of the Tariff Act of 1930, as amended, contain an explicit grant of such authority. Paragraph (h) relating to a petitioner’s role in the suspension procedures has been amended to explicitly reflect the legislative intent that the petitioner be given a meaningful role during the period prior to acceptance of the agreement.

19. Section 355.32 Violations of Agreements. This section pertaining to the violation of agreements which form the basis for the suspension of an investigation remains unchanged except for a clarifying amendment in paragraph (b). The language of that paragraph has been modified so as to make it clear that notice of a possible breach will be given to parties only where that breach is inadvertent and other than one which is considered to be intentional as defined in paragraph (c) of the section.

20. Section 355.33 Final determinations. One comment requested that disclosure under subsection (c) be made automatically. This comment was rejected on the grounds that it does not impose an undue burden to require a party to request disclosure.

A number of comments stated that the deadline is too short for presenting written views prior to a final determination. While sympathetic to these views, the Department of Commerce has not been able to incorporate the suggested changes because any additional time granted to the parties would impair the ability of the Department to meet the deadlines imposed by the Tariff Act of 1930, as amended. However, a provision was added allowing for an extension of time for good cause.

21. Section 355.34 Submission of Information and Written Views. A comment suggested that the requirement that each party serve its written comments on the other parties be deleted because of the burden imposed on small businesses. In response to this comment, a provision was added allowing the Secretary to waive the requirement when unduly burdensome.

22. Section 355.35 Hearings. One comment suggested that notice of the hearing be given in the notice of the preliminary determination. This comment was rejected because at the time of the preliminary determination the parties have not necessarily have been scheduled.

23. Section 355.36 Countervailing Duty Order. This proposed section has been amended to specify that where an investigation is continued pursuant to section 704(g) of the Tariff Act of 1930, as amended, and where the final determination by the Department and the Commission are affirmative, the Department shall not issue a Countervailing Duty Order so long as the suspension agreement remains in force and continues to meet the statutory requirements, and the parties to the suspension agreement carry out their obligations thereunder.

24. Section 355.37 Differences in Determined and Implied Countervailing Duties. This section provides for adjustments to be made where the estimated countervailing duty deposited differs from that finally determined as due. No written comments were received on this section, and it remains unchanged from the proposed regulation.

25. Section 355.38 Effect on Firms Not Benefitting From Subsidy. Conflicting comments were received pertaining to this section; some recommended that exclusion be automatic others that it be discretionary. Practical administrative considerations dictate that a firm which although potentially subject to an order, has not itself been investigated, should bear the burden of making application for exclusion and supplying the necessary information. Those firms which are investigated will automatically be excluded if exclusion is appropriate. Where firms are excluded, however, the regulations provide for publication of the name of any firm so excluded. Ordinarily, firms wishing to be considered for exclusion from any possible affirmative determination should submit an application for exclusion, together with all necessary supporting documentation, no later than 30 days after the date of publication of the notice of initiation of Countervailing Duty Investigation.

26. Section 355.39 Verification of Information; Use of Best Information Available. The section has been amended to reflect several comments which suggested that a party be notified of, and afforded an opportunity to correct, a defect in its submission. The resubmission of information to permit the correction of a deficiency will be allowed so long as the resubmission is made within a time period which permits adequate analysis and verification of the information so submitted. A substantial extension of the original time period in most instances would not only impair the ability of the Department to determine whether the respondent is benefiting from a subsidy.

Several other comments criticized the requirement for English translations set forth in paragraph (d). This paragraph
Trade Agreements Act of 1979. This effectively implement the intent of the procedures which should more addresses these concerns and adopts administration of the law.

violation of the purpose of the termination could result in a flagrant the issuance of a revocation or termination was too long. They also in the comments received. This section sets forth the rate of interest to be paid on certain overpayments and underpayments. No. written comments were received on this section, and it remains unchanged from the proposed regulation.

This section provides for a revocation or termination both upon application by an interested party and on the Secretary's own initiative. Where the revocation or termination is issued on the basis of an application made by an interested party, a minimum of two years must have elapsed in which the imported merchandise had not benefitted from a subsidy. The two-year period will run from either the date of the issuance of the Countervailing Duty Order or the date of the preliminary determination, depending upon whether the party seeking revocation or termination can demonstrate that the imported merchandise had not benefitted from a subsidy during the period of and immediately preceding the countervailing duty investigation.

Pursuant to paragraph (d), a revocation or termination will not be issued unless the party making application agrees in writing to an immediate suspension of liquidation and reinstatement of the Order or continuation of the investigation, as appropriate, if circumstances develop which indicate that the merchandise thereafter imported benefited from a subsidy.

Where three years have elapsed and the Secretary has determined that there is no likelihood of resumption of the imports of the merchandise subject to the Order or the subsidy has been eliminated, paragraph (b) authorizes the Secretary to issue a revocation or termination on his own initiative. The remaining provisions of paragraphs (c) and (d) establish the procedures which have been adopted for revocation and termination. A tentative notice will be issued and an opportunity for presentation of views will be afforded. Where the Secretary's final decision is to grant a revocation or termination, a notice to that effect will be issued.

30. Section 355.43 Subsidy Practices Discovered During an Investigation.

Several comments suggested that when it is impracticable to include a newly discovered subsidy practice in an ongoing investigation, the Secretary should initiate another investigation. In response to these comments, this section is changed to provide that the Secretary shall initiate a separate investigation of the newly discovered subsidy practice or allow the petitioner to withdraw the petition and resubmit it including the newly discovered subsidy practice.

31. Section 355.44 Library of Foreign Subsidy Practices and Countervailing Duty Measures. Several comments suggested adding a section providing for the creation of a subsidy library. This was done.

32. Section 333.50 Action by the District Director, Suspension of Liquidation. It has been determined that the substance of this provision is more appropriately addressed in regulations which are to be issued by the Customs Service, Department of the Treasury.
§ 355.6 Definitions of Countervailing Duty
"Proceeding," "Investigation," "Determination" and "Order."

Subpart B—Access to Information

355.15 Information generally available.
355.16 Ex parte meetings.
355.17 Confidentiality maintained.
355.18 Requests for confidential treatment of information.
355.19 Standards for determining confidentiality of information.
355.20 Limited disclosure of certain confidential information under an Administrative Protective Order.
355.21 Information exempt from disclosure.

Subpart C—Countervailing Duty Procedures and Determinations

355.26 Procedures for initiation by petition.
355.27 Determination of sufficiency of petition.
355.28 Preliminary determinations.
355.29 Critical circumstances determinations.
355.30 Termination of investigation.
355.31 Suspension of investigation.
355.32 Violations of agreements.
355.33 Final determinations.
355.34 Submission of information and written views.
355.35 Hearings.
355.36 Countervailing duty order.
355.37 Differences in determined and estimated countervailing duties.
355.38 Effect on firms not benefitting from subsidy.
355.39 Verification of information; use of best information available.
355.40 Interest on certain overpayments and underpayments.
355.41 Administrative review of determinations.
355.42 Revocation of countervailing duty order and termination of suspended investigation.
355.43 Subsidy practices discovered during investigation.
355.44 Library of foreign subsidy practices and countervailing measures.

Annex I—Administrative and Interpretive Guidelines for Determination and Calculation of Subsidies


Annex III—Countervailing Duty Orders Currently in Effect.


§ 355.0 Scope.

This part sets forth procedures and rules applicable to proceedings under sections 303 and Title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1303 et seq.) [hereinafter referred to as "the Act"] relating to the imposition of countervailing duties. The regulations established in this part shall be applicable under section 303 of the Act except that in the case of any imported article or merchandise which is dutiable—

(a) No determination by the Commission under sections 703(a), 704, or 705(b)(1) of the Act shall be required; 
(b) No investigation may be suspended under section 704(c) of the Act, and § 355.31(b) and related sections hereof shall be inapplicable; 
(c) No determination of critical circumstances shall be made, and § 355.29 hereof shall be inapplicable; 
(d) No injury information need be contained in the petition as would otherwise be required by §§ 355.26(a)(12) and (a)(13); and
(e) Wherever the regulations require that allegations or information with respect to the issues of injury and subsidy contained in section 701(a) of the Act be provided, only information or allegations with respect to the question of subsidy in section 701(a)(1) shall be required.

Determinations by the Secretary under the Act shall not be considered major federal actions significantly affecting the environment within the meaning of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.) and Executive Order 11514, March 5, 1970, as amended by Executive Order 11991, May 24, 1977; and Executive Order 12114, January 4, 1979.

Subpart A—Definitions

§§ 355.1-355.5 [Reserved]

§ 355.6 Definitions of Countervailing Duty
"Proceeding," "Investigation," "Determination" and "Order."

(a) A "proceeding" refers to that time from the filing of a petition (or publication of a notice of self-initiation under section 702(a) of the Act) until the publication of the earliest of (1) a notice of termination, (2) a negative determination that has the effect of terminating the administrative proceedings; or (3) a notice of revocation of an Order.

(b) An "investigation" refers to that time between the publication of a notice of initiation and the publication of the earliest of (1) a notice of termination, (2) a negative determination that has the effect of terminating the administrative proceedings; or (3) a notice of revocation of an Order.

(c) A "determination" is an official decision in the course of a proceeding.

(d) An "Order" is a notice issued following final determinations of subsidy and, when applicable, injury, which provides for the imposition of countervailing duties.

§ 355.7 Other definitions.

(a) Country. "Country" means a foreign country, a political subdivision, dependent territory, or possession of a foreign country, and may include an association of two or more foreign countries, political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States.

(b) Industry. "Industry" means the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product as provided in section 777(d) of the Act.

An "industry" may also include domestic producers in a particular market in the United States where such producers sell all or almost all of their production of the like product in question in that market and where 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.

(c) Interested Party. "Interested party" means—

(1) A foreign manufacturer, producer or exporter, or the United States importer, of merchandise which is the subject of an investigation under sections 303 or Title VII of the Act or a trade or business association a majority of the members of which are importers of such merchandise;

(2) The government of a country in which such merchandise is produced or manufactured;

(3) A manufacturer, producer, or wholesaler in the United States of a like product;

(4) A certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product; or

(5) A trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

(d) Person. "Person" includes all "interested parties" as well as other individuals, enterprises or entities, as appropriate to the context.

(e) Secretary. "Secretary" means the Secretary of Commerce or his designee.


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

(h) Department. "Department" means the Department of Commerce.
(i) Party to the proceeding. "Party to the proceeding" means (1) the petitioner; (2) the government of the country in which the merchandise subject to the investigation is manufactured or produced, or from which it is exported; (3) foreign manufacturers, producers and exporters of the merchandise subject to the investigation; and (4) any other interested party, within the meaning of paragraph (c), who informs the Secretary in writing of his intent to become a party to the proceeding within 20 days after the preliminary determination or who demonstrates to the satisfaction of the Secretary good cause for intervention.

(j) Agreement. "Agreement" means the "Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (Relating to Subsidies and Countervailing Measures), approved under section 2(a) of the Trade Agreements Act of 1979, as the same may be amended, and as such amendments are approved, or otherwise accepted by or for the United States Government.

Subpart B—Access to Information

§ 355.15 Information generally available.

(a) Duty to maintain material in record. The Department shall maintain the official record of all proceedings. The record shall consist of a copy of all documents prepared by an officer or employee of the United States Government, factual matters, as distinguished from advice, recommendations, opinions and evaluations, contained in any such documents will be made available by summary or otherwise on the same basis as information contained in documents submitted by other persons. The fees charged for providing copies of documents shall be the same as for providing copies of documents pursuant to requests made under the Freedom of Information Act (5 U.S.C. 552). (See 13 CFR 4.9).

(c) Reports of progress of investigation. The Department shall, from time to time upon request; inform any party to the proceeding of the progress of an investigation. Ordinarily, no such report shall be provided until 60 days after the petition is filed. Such-progress reports shall not contain privileged or confidential information and, if in written form, shall be included in the official record.

(d) Protection of the record. Unless otherwise ordered in a particular case by the Secretary, the record shall not be removed from the Department. A certified copy of such record shall be made available to any court before which any aspect of a proceeding is under review, with appropriate safeguards to prevent disclosure of confidential or privileged information that may be included therein.

§ 355.16 Ex parte meetings.

A written memorandum will be prepared of any ex parte meeting between (a) any interested party or other person providing factual information material to a determination in the proceeding and (b) the person to whom the authority to make determinations under the Act has been delegated (the Assistant Secretary for Trade Administration) or the person making a final recommendation for decision to such person (the Deputy Assistant Secretary for Import Administration). Such memorandum shall be prepared as expeditiously as possible. It shall be included in the official record. The memorandum of such ex parte meeting shall include the date, time and place of the meeting, the identity of all persons present, and a non-confidential summary of the matters discussed or then submitted. Normally this memorandum shall be prepared by one of the Government participants at the meeting. If the Assistant Secretary or Deputy Assistant Secretary directs that the memorandum be prepared by a non-government participant, the Assistant Secretary or Deputy Assistant Secretary (whichever directs preparation by a non-government participant) shall act expeditiously to review, approve and include in the record such memorandum.

§ 355.17 Confidentiality maintained.

Except as provided in § 355.20, information submitted to the Department which is designated as confidential by the person submitting it shall not be disclosed to any person (other than an officer or employee of the United States Government who is directly concerned with carrying out the investigation in connection with which the information is submitted) without the consent of the person submitting it. (§ 355.16(e) sets forth the procedures followed where a request for confidential treatment is denied, in whole or in part.)

§ 355.18 Requests for confidential treatment of information.

(a) Submission and contents of requests. Any person who submits information in connection with a proceeding may request that such information, or any specified part thereof, be treated as confidential. Any information submitted which is not designated as confidential by the person submitting it normally shall not be treated as confidential. Information which is subject to a request for confidential treatment shall be set forth on separate pages and each such page shall be clearly marked "Confidential Treatment Requested." Each separate request for confidential treatment of information, other than information submitted in confidence by a foreign government which is restricted from disclosure pursuant to statute or Executive Order, shall be accompanied by a full statement of the reason or reasons why the submitting party believes that each piece of information subject to such request is entitled to confidential treatment within the guidelines set forth in § 355.19. All requests for confidential treatment shall be accompanied by one of the following:

(1) A summary or approximated presentation of all information which may be disclosed to the public and which is sufficiently full and descriptive of the confidential information (generally, data in numerical form relating to prices and costs of individual forms shall be considered adequately summarized—and not incapable of summary—if presented—or capable of being presented—in terms of indices or in figures within 10% of the actual figure).

(2) A statement by the person, submitting the information that the information is not susceptible to such a summary or presentation, accompanied...
by a full statement of the reasons supporting this conclusion; or
(3) An agreement to permit disclosure under protective order, accompanied by a brief nonconfidential statement describing the confidential data submitted, which need not be as detailed as the summary provided under (1) above. Should the information concerned not be released under an administrative protective order, the person submitting the information must, unless he requests that the information be returned and not considered in the proceeding, submit either a summary or approximated presentation conforming to paragraph (a)(1) of this section or a statement under paragraph (a)(2) of this section within the time period specified in the denial of the request for an administrative protective order. The requirements of the preceding sentence do not apply where the Secretary, because of unusual circumstances, determines that a less detailed nonconfidential summary is appropriate. In such unusual circumstances such less detailed summary as deemed appropriate by the Secretary must be submitted.

(b) Return of information as a result of non-conforming requests. Any information for which confidential treatment is requested which does not conform to the requirements of paragraph (a)(1) (including the requirement that any summary or approximated presentation be sufficiently full and descriptive) may be returned to the submitting person, together with an explanation of the reasons it is nonconforming, and will not be considered in connection with the proceeding. Information so returned may be resubmitted with a new request for confidential treatment which complies with the requirements of this section, and will be dealt with in the same manner as an original submission of information accompanied by a request in acceptable form, if received within the time for the original submission. Belated submissions may be rejected.

(c) Consideration of requests. While a determination as to whether to grant a request for confidential treatment is pending, the information for which confidential treatment is requested shall be treated as confidential by the Department. A determination normally shall be made within 10 business days after the receipt of information accompanied by a conforming request for confidential treatment, whether, and, if so, to what extent, the request for confidential treatment shall be granted and whether claims submitted under paragraph (a)(2) are justified.

(d) Treatment of information where request for confidential treatment is granted. (1) If a request for confidential treatment of information is granted, the information covered thereby will not be made available, except pursuant to §355.20, for inspection or copying.
   (i) by any person other than an officer or employee of the United States Government directly involved with carrying out an investigation in connection with which the information is submitted, or
   (ii) by a person who has been specifically authorized to receive such information by the person who requests the confidential treatment.
(2) Information for which confidential treatment is granted shall be made available to officers and employees of the Commission only upon confirmation that the confidentiality of such information will be maintained and that it will not be disclosed, either publicly or under an administrative protective order, without the express, written consent of the Secretary.
(3) Information submitted in confidence by a foreign government shall be made available only to the extent, and under the procedures, provided in Executive Order 12065 of June 28, 1978 (43 FR 28949), or any superseding or amending Order.
(e) Treatment of information where request for confidential treatment is denied. Should it be determined that any part of the material for which confidential treatment has been requested (1) does not warrant confidential treatment in whole or in part, (2) is in a form which cannot reasonably be associated with, or otherwise used to identify, the operations of a particular person and thus should not be treated as confidential, or (3) that information claimed not susceptible to a nonconfidential summary is in fact capable of such treatment, the Department shall notify the person who submitted the information. Unless the person submitting the information thereafter agrees that the information (including any summarized or approximated presentation thereof) may be treated as nonconfidential information, or provides a summary of matters found to be capable of such treatment, such information (including any summarized or approximated presentation thereof) shall be returned to the submitting person and not considered in the proceeding.

§355.19 Standards for determining confidentiality of information.
(a) In general. Information ordinarily will be considered to be privileged or confidential only if its disclosure would be likely:
(1) To cause substantial harm to the competitive position of the person submitting the information;
(2) To have a substantial adverse effect upon the person supplying the information or upon the person from whom the information was obtained; or
(3) To impair the ability of the United States Government to obtain in the future necessary information not required by law to be provided, from the same person or others similarly situated.
(b) Information ordinarily regarded as appropriate for disclosure. Except as provided in paragraph (c), information ordinarily will be regarded as appropriate for disclosure if it relates to:
(1) Prices, market conditions, terms of sale or similar information that is published or otherwise available to the public;
(2) Laws, regulations, Executive Orders, or other official documents which are published in the country by which adopted, as well as translations thereof; or
(3) Information submitted by the petitioner or other domestic interested party concerning the operations of a foreign interested party, except to the extent that it might disclose the identity of confidential sources.
(c) Information ordinarily regarded as privileged or confidential. Information will ordinarily be regarded as privileged or confidential if it would disclose:
(1) Business or trade secrets;
(2) Production costs;
(3) Distribution costs;
(4) Prices of actual transactions or offers;
(5) The names of particular customers or suppliers;
(6) The exact amounts of the gross subsidies received and used by an enterprise; or
(7) The names of particular persons from whom confidential information was obtained, if nondisclosure of the names has been requested and approved by the Secretary.

§355.20 Limited disclosure of certain confidential information under an administrative protective order.
(a) In General. (1) Any confidential information (other than information submitted in confidence by a foreign government which is restricted from disclosure pursuant to statute or Executive Order), including some or all of the information described in §355.19(c), may be made available to an attorney or other representative under an administrative protective order as described in paragraph (b). Forms for submitting requests for disclosure pursuant to a
The proceeding shall require that the attorney or representative of a party to the proceeding must (i) describe with particularity the information requested and set forth the reasons for the request, (ii) indicate the procedures to be followed to avoid unauthorized disclosure of the information requested, and (iii) demonstrate good cause for release of such information.

(2) Upon receipt of an application for disclosure of confidential information under a protective order, the Secretary shall inform the person from whom the information was obtained of the request and provide an opportunity for such person to comment thereon.

(3) In determining whether to release information under a protective order, the Secretary shall weigh whether the need of the person requesting the information outweighs the need of the person submitting it for continued confidential treatment. Account shall be taken of the probable effectiveness of the sanctions described under paragraph (e) of this section, or other sanctions as may be prescribed for breach of the order. Generally, disclosure under a protective order will be made only to attorneys who are subject to disbarment from practice in the event of a violation of the order.

(4) Should it be determined to release information under a protective order, the person submitting the information will be so notified. If the person submitting the information does not agree to the release of the information under protective order, such information shall be returned to the submitting party and not considered in the proceeding.

(b) Protective Order. The protective order under which information is made available to the attorney or other representative of a party to the proceeding shall require that attorney or representative to submit a personal sworn statement that he/she will:

(i) Not divulge any of the information so obtained and not otherwise available to him to any other person other than:

(ii) The person from whom the information was obtained;

(iii) An attorney in good standing employed on behalf of the party requesting the disclosure who has furnished an appropriate, similar statement; or

(iv) Those persons other than attorneys employed by or supervised by the attorney or representative (but in no case including officers, partners, associates of the party represented or any other domestic competitor of the foreign firm whose information is involved) having a need therefore in connection with preparing oral or written statements in the proceeding, who shall have furnished a similar statement;

(2) Use such information solely for the purposes of the proceeding then in progress;

(3) Not consult with any person other than a person described in paragraph (b)(1) (i) or (ii) concerning such confidential information without obtaining the approval of the Department and the party (or the attorney for the party) from whom such confidential information was obtained;

(4) Take adequate precautions to ensure the security of the confidential materials and the information contained therein subject to the protective order; and

(5) Promptly report any breach of such agreement to the Secretary.

(c) Acknowledgement of sanctions for breach of protective order. The sworn statement referred to in paragraph (b) shall include an acknowledgement by the person providing it that breach thereof:

(i) May subject the following persons to disbarment from practice before any constituent agency of the Department for up to seven years following publication of a determination that the order has been breached: (i) The person submitting the statement; (ii) Any firm of which such person is a partner, associate, or employee; and (iii) Such person's partners, associates, employer and employees;

(2) Shall, in the case of an attorney, lead to referral of such breach at the ethics panel of the appropriate bar association; and

(3) Shall subject the offender and the party he represents to such other administrative sanctions determined to be appropriate, including striking from the record any information or briefs submitted by, or on behalf of, the party represented by the offender, terminating any investigation then in progress, or revoking any Order then in effect.

(2) Any person to whom such sanctions are proposed to be applied shall be afforded a reasonable opportunity to be heard before the determination is made.

§ 355.21 Information exempt from disclosure.

Information which might otherwise be available under this subpart shall be exempt from disclosure if it relates to any matter which is required to be kept confidential pursuant to privilege, statute or Executive Order. This includes information which has been provided to the United States in confidence by a foreign government or international organization of governments. Such information currently is restricted from disclosure pursuant to Executive Order No. 12065 of June 28, 1978 (43 FR 28949).
Subpart C—Countervailing Duty Procedures and Determinations
(a) General. Whenever the Secretary determines, from information available to him, that a countervailing duty investigation is warranted into the question of whether the duty imposed by Section 701(a) of the Act should be imposed with respect to a particular class or kind of merchandise imported into the United States, he shall publish in the Federal Register a "Notice of Initiation of countervailing duty Investigation," provided that such merchandise is produced or exported from a country which is a country under the Agreement, such notice shall be published only after giving such country an opportunity for consultation. The Notice is to include:
(1) A description of the merchandise involved;
(2) The name of the country of exportation to the United States and, if the merchandise is produced in a country other than that from which it is exported, the name of the country in which the merchandise is produced;
(3) A summary of the information received that would, if found to be accurate, require the imposition of duties pursuant to section 701(a) of the Act; and
(4) A statement that the investigation will be terminated without further notice upon publication of notice of a preliminary of final negative injury determination by the Commission.
(b) Information provided to the Commission. Upon initiation of the investigation, the Commission will be notified promptly, and will be provided with such information as is available relating to the matter under investigation, including any available information on the amount of the net subsidy, the volume of trade, and the information for which confidential treatment has been granted by the Secretary shall be made available to the Commission only upon confirmation that the confidentiality of such information will be maintained and that it will not be disclosed, either publicly or under an administrative protective order, without the express written consent of the Secretary.
§ 355.26 Procedures for initiation by petition.
(a) Contents of petition. Any interested party, as defined in subparagraph (C), (D), or (E) of section 771(9) of the Act, who has reason to believe that a subsidy is being provided with respect to merchandise imported into the United States and, except for dutiable merchandise of a country which is not a country under the Agreement (hereinafter "non-agreement country"), that an industry in the U.S. is being or is likely to be materially injured or its establishment is materially retarded by reason of a subsidy of that merchandise may file a petition on behalf of an industry pursuant to section 701(a) of the Act with the Secretary. Attention: Assistant Secretary for Trade Administration, Room 3550, Department of Commerce, Washington, D.C. 20230, requesting the imposition of additional duties in an amount equal to the alleged subsidy.
The petition shall contain, or be accompanied by, information, to the extent reasonably available to the petitioner, in substantially the following form:
(1) The name and address of the petitioner and any other person, firm, or association the petitioner represents, if appropriate;
(2) The industry on whose behalf the petition is filed, including the names of other enterprises included in such industry;
(3) A statement indicating whether the applicant has initiated proceedings pursuant to sections 337 and 732 of the Act (19 U.S.C. 1337, 1673a) or section 201 of the Trade Act of 1974 (19 U.S.C. 2411), or has filed, or is filing, for import relief pursuant to section 201 of the Trade Act of 1974 (19 U.S.C. 2251), or has initiated proceedings pursuant to section 323 of the Textile Expansion Act of 1962 (19 U.S.C. 1862), with respect to the merchandise which is the subject of the proceeding;
(4) A detailed description of the imported merchandise in question, including its technical characteristics and uses, and, where appropriate, its tariff classification under the Tariff Schedules of the United States;
(5) The name of the country or countries from which the merchandise is being, or is likely to be, exported to the United States and, if the merchandise is produced in a country other than that from which it is exported, the name of the country in which it is produced;
(6) The names and addresses of enterprises believed to be benefitting from the subsidy and exporting the merchandise so benefitted to the United States;
(7) All pertinent facts with regard to the alleged subsidy including, if known, the statutory or other authority under which it is provided, the manner in which it is paid and the value of such subsidy when received and used by producers or sellers of the merchandise; and
(8) In addition to information concerning alleged subsidies, information as to individual sales (including customers) and prices thereof on sales by foreign manufacturers, producers or exporters to the United States during the period to be investigated;
(9) The volume and value of imports of the merchandise from the country in question in the most recent two-year period, and also other periods if the petitioner believes such other periods to be more representative, or, if the merchandise is not presently imported into the United States or is not imported in significant quantities, information as to the likelihood of its importation;
(10) The names and addresses of enterprises believed to be importing the merchandise;
(11) The names and addresses of the other enterprises in the United States engaged in the production, manufacture or sale of like or similar merchandise, information need not be provided with respect to any enterprises that accounted for less than 2% of domestic production, manufacture or sale of like merchandise during the most recent 12-month period;
(12) Information as to the material injury or threat thereof to, or the material retardation of the establishment of, a United States industry by reason of the imported merchandise alleged to be subsidized, as described in 19 CFR 207.11 and 207.2a.
(i) If "critical circumstances" are alleged, information as to:
(i) Material injury which is difficult to repair;
(ii) Massive imports in a relatively short period; and
(iii) How the product benefits from an export subsidy which is inconsistent with the Agreement and
(13) Any other documentation on which petitioner relies in making its petition. Forms for the submission of petitions may be adopted from time to time. The use of such forms shall not be mandatory, provided the information required thereby and reasonably available to the petitioner is otherwise included in the petition.
(b) Translations to English. Unless such requirement is waived in individual cases, any information submitted in the petition or in support thereof, which is in a foreign language, must be accompanied by an English translation.
(c) Simultaneous filing with Commission. Except for petitions with respect to dutiable merchandise from non-agreement countries, the petitioner shall file a copy of the petition with the Commission on the same day as the petition is filed with the Secretary and shall so certify in submitting the petition to the Secretary.
(d) Confidentiality of information. Any petition which contains information for which confidential treatment has been requested and which is essential to support the petition will not be considered to have been received in acceptable form unless the requirements of § 355.18(a) of this part are met.

(e) Amendment of petition. Upon timely receipt of additional information, the Secretary shall allow amendment of the petition. Except for petitions with respect to dutiable merchandise from non-agreement countries, any such amendment must be filed with the Commission on the same day as they are filed with the Secretary. If that petition properly alleges the basis on which a countervailing duty may be imposed under section 701(a) of the Act, does not contain information deemed reasonably available to the petitioner supporting the allegations, or is not filed by an interested party described in subsection (C), (D), or (E) of section 771(9) of the Act, the petition shall be dismissed and the proceeding terminated. The petitioner shall be notified in writing of the reasons for dismissal, and a notice of “Dismissal of Countervailing Duty Petition” shall be published in the Federal Register, which shall summarize the reasons for dismissal of the petition.

(f) Notice to Commission. A copy of any determination hereunder shall be furnished promptly to the Commission. If the investigation is initiated, such information as has been received relating to the matter under investigation shall be made available to the Commission. Information for which confidential treatment has been granted by the Secretary shall be made available to the Commission only upon confirmation that the confidentiality of such information will be disclosed, either publicly or under an administrative protective order, without the express written consent of the Secretary.

§ 355.27 Determination of sufficiency of petition.

(a) Determination of sufficiency. Within 60 days after a petition is filed under § 355.28 a determination shall be made by the Secretary on the sufficiency of the petition. A petition is considered to be filed at the time it is received by the Secretary.

(b) Notice. If that petition properly alleges the basis on which a countervailing duty may be imposed under section 701(a) of the Act, contains information reasonably available to the petitioner supporting the allegations, and is filed by an interested party described in subsection (C), (D), or (E) of section 771(9) of the Act, an investigation shall be initiated and a notice of “Initiation of Countervailing Duty Investigation” shall be published in the Federal Register. The notice shall contain a description of the merchandise subject to the investigation, based upon consultation between the Secretary and the Commission.

(c) Insufficiency of petition. If it is determined that a petition does not properly allege the basis on which a countervailing duty may be imposed under section 701(a) of the Act, does not contain information deemed reasonably available to the petitioner supporting the allegations, or is not filed by an interested party described in subsection (C), (D), or (E) of section 771(9) of the Act, the petition shall be dismissed and the proceeding terminated. The petitioner shall be notified in writing of the reasons for dismissal, and a notice of “Dismissal of Countervailing Duty Petition” shall be published in the Federal Register, which shall summarize the reasons for dismissal of the petition.

(1) If a case is determined to be extraordinarily complicated, the preliminary determination shall be made not later than the 150th day after the petition is filed under section 702(b) of the Act, or an investigation is commenced under section 702(a) of the Act.

(2) Any determination that a case is “extraordinarily complicated” shall be based on express findings that:

(i) The importing and exporting parties are cooperating with the investigation;

(ii) The case is extraordinarily complicated by reason of (A) the number and complexity of the alleged subsidy practices under investigation, (B) the novelty of the issues presented, (C) the need to determine the extent to which particular subsidies are used by individuals, manufacturers, producers, exporters, or (D) the number of firms whose activities must be investigated; and

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

(3) All parties to the proceeding shall be notified in writing of any determination to treat the case as “extraordinarily complicated,” not later than 20 days before the date on which the preliminary determination would otherwise be required under section 705(b) of the Act. Upon making such a determination, a notice of “Postponement of Preliminary Determination” shall be published in the Federal Register, which notice shall summarize the reasons for the postponement.

(d) Contents of preliminary determination. The preliminary determination shall include conclusions with regard to all facts and issues of law considered material to the determination, and shall, if affirmative:

(1) Order the suspension of liquidation of all entries of merchandise subject to the facts and conclusions of law upon which it is based, shall be mailed or otherwise delivered to all parties to the proceeding and the Commission.

(b) Extraordinarily complicated cases. (1) If a case is determined to be extraordinarily complicated, the preliminary determination shall be made not later than the 150th day after the petition is filed under section 702(b) of the Act, or an investigation is commenced under section 702(a) of the Act.

(2) Any determination that a case is “extraordinarily complicated” shall be based on express findings that:

(i) The importing and exporting parties are cooperating with the investigation;

(ii) The case is extraordinarily complicated by reason of (A) the number and complexity of the alleged subsidy practices under investigation, (B) the novelty of the issues presented, (C) the need to determine the extent to which particular subsidies are used by individuals, manufacturers, producers, exporters, or (D) the number of firms whose activities must be investigated; and

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

(3) All parties to the proceeding shall be notified in writing of any determination to treat the case as “extraordinarily complicated,” not later than 20 days before the date on which the preliminary determination would otherwise be required under section 705(b) of the Act. Upon making such a determination, a notice of “Postponement of Preliminary Determination” shall be published in the Federal Register, which notice shall summarize the reasons for the postponement.

(c) Request for extension by petitioner. If a request for an extension, stating the reasons for the request, is received from the petitioner no later than 25 days before the preliminary determination would otherwise be required under section 705(b) of the Act, the preliminary determination may be postponed until not later than the 150th day after the date on which the petition is filed. Upon acting on such a request a notice of “Postponement of Preliminary Determination” shall be published in the Federal Register, stating the extent to which the petition has been made at the petitioner’s request.

(d) Contents of preliminary determination. The preliminary determination shall include conclusions with regard to all facts and issues of law considered material to the determination, and shall, if affirmative:

(1) Order the suspension of liquidation of all entries of merchandise subject to
the determination which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register; and
(2) Impose provisional measures by requiring a cash deposit, or the posting of a bond or other security for each entry of the merchandise concerned equal to the estimated amount of the net subsidy applicable to such merchandise. The posting of a bond or other security will be deemed adequate unless the revenue will not be sufficiently protected.
(e) Commission access to information. All information upon which the determination was based and which the Commission may consider relevant to its injury determination shall be made available to the Commission. Information for which confidential treatment has been granted by the Secretary shall be made available to the Commission only upon confirmation that the confidentiality of such information will be maintained and that it will not be disclosed, either publicly or under an administrative protective order, without the express written consent of the Secretary.

§ 355.29 Critical circumstances determinations.
(a) Determination. If, not less than 30 days before the date on which a final determination is due, a petitioner alleges critical circumstances, then at the time the preliminary determination is made or, if such determination is due within 20 days or has already been made, then within 1 month after the allegation is received, a determination shall be made whether there is a reasonable basis to believe or suspect that there have been massive imports of the merchandise subject to the investigation over a relatively short period, and if so, whether the alleged subsidy is an export subsidy inconsistent with the Agreement. If, not more than 30 but not less than 20 days before the date on which a final determination is due, a petitioner alleges critical circumstances, then at the time the preliminary determination is made or, if such determination is due within 20 days or has already been made, then within 1 month after the allegation is received, a determination shall be made whether there is a reasonable basis to believe or suspect that there have been massive imports of the merchandise subject to the investigation over a relatively short period, and if so, whether the alleged subsidy is an export subsidy inconsistent with the Agreement. If, not more than 30 but not less than 20 days before the date on which a final determination is due, a petitioner alleges critical circumstances, then at the time the preliminary determination is made or, if such determination is due within 20 days or has already been made, then within 1 month after the allegation is received, a determination shall be made whether there is a reasonable basis to believe or suspect that there have been massive imports of the merchandise subject to the investigation over a relatively short period, and if so, whether the alleged subsidy is an export subsidy inconsistent with the Agreement. If, not more than 30 but not less than 20 days before the date on which a final determination is due, a petitioner alleges critical circumstances, then at the time the preliminary determination is made or, if such determination is due within 20 days or has already been made, then within 1 month after the allegation is received, a determination shall be made whether there is a reasonable basis to believe or suspect that there have been massive imports of the merchandise subject to the investigation over a relatively short period, and if so, whether the alleged subsidy is an export subsidy inconsistent with the Agreement. If, not more than 30 but not less than 20 days before the date on which a final determination is due, a petitioner alleges critical circumstances, then at the time the preliminary determination is made or, if such determination is due within 20 days or has already been made, then within 1 month after the allegation is received, a determination shall be made whether there is a reasonable basis to believe or suspect that there have been massive imports of the merchandise subject to the investigation over a relatively short period, and if so, whether the alleged subsidy is an export subsidy inconsistent with the Agreement. If, not more than 30 but not less than 20 days before the date on which a final determination is due, a petitioner alleges critical circumstances, then at the time the preliminary determination is made or, if such determination is due within 20 days or has already been made, then within 1 month after the allegation is received, a determination shall be made whether there is a reasonable basis to believe or suspect that there have been massive imports of the merchandise subject to the investigation over a relatively short period, and if so, whether the alleged subsidy is an export subsidy inconsistent with the Agreement. If, not more than 30 but not less than 20 days before the date on which a final determination is due, a petitioner alleges critical circumstances, then at the time the preliminary determination is made or, if such determination is due within 20 days or has already been made, then within 1 month after the allegation is received, a determination shall be made whether there is a reasonable basis to believe or suspect that there have been massive imports of the merchandise subject to the investigation over a relatively short period, and if so, whether the alleged subsidy is an export subsidy inconsistent with the Agreement. If, not more than 30 but not less than 20 days before the date on which a final determination is due, a petitioner alleges critical circumstances, then at the time the preliminary determination is made or, if such determination is due within 20 days or has already been made, then within 1 month after the allegation is received, a determination shall be made whether there is a reasonable basis to believe or suspect that there have been massive imports of the merchandise subject to the investigation over a relatively short period, and if so, whether the alleged subsidy is an export subsidy inconsistent with the Agreement. If, not more than 30 but not less than 20 days before the date on which a final determination is due, a petitioner alleges critical circumstances, then at the time the preliminary determination is made or, if such determination is due within 20 days or has already been made, then within 1 month after the allegation is received, a determination shall be made whether there is a reasonable basis to believe or suspect that there have been massive imports of the merchandise subject to the investigation over a relatively short period, and if so, whether the alleged subsidy is an export subsidy inconsistent with the Agreement. If, not more than 30 but not less than 20 days before the date on which a final determination is due, a petitioner alleges critical circumstances, then at the time the preliminary determination is made or, if such determination is due within 20 days or has already been made, then within 1 month after the allegation is received, a determination shall be made whether there is a reasonable basis to believe or suspect that there have been massive imports of the merchandise subject to the investigation over a relatively short period, and if so, whether the alleged subsidy is an export subsidy inconsistent with the Agreement.
(c) Suspension of liquidation. Upon an affirmative preliminary determination of critical circumstances, any suspension of liquidation ordered under Section 703(d)(1) of the Act shall apply, or if notice of suspension of liquidation has already been published, such suspension shall be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered.
(d) Publication of notice. Upon an affirmative preliminary determination of critical circumstances, a notice thereof shall be published in the Federal Register, either as part of the notice of preliminary determination, or, if occurring later, as a separate notice of "Preliminary Determination of Critical Circumstances." § 355.30 Termination of investigation.
(a) Termination upon withdrawal of petition. A countervailing duty investigation may be terminated by the Secretary at any time upon withdrawal by the petitioner of the petition on which the investigation was initiated, after notice to all other parties to the investigation and consultation with the Commission. No investigation shall be terminated unless it is determined such termination is in the public interest. Notice of any termination shall be published in the Federal Register, together, where appropriate, with a copy of any correspondence exchanged with the petitioner on the basis of which the petitioner withdrew the petition and the investigation was terminated.
(b) Termination upon negative determination. An investigation shall be deemed terminated, without further comment or action, upon publication of any negative final determination or a negative preliminary or final determination by the Commission on the issue of injury.
§ 355.31 Suspension of investigation.
(a) Agreements to eliminate or completely offset a subsidy or to cease exports. An investigation may be suspended at any time before a final determination if the government of the country in which the subsidy practice occurs agrees, or exporters who account for substantially all of the imports of the merchandise which is the subject of the investigation agree:
(1) To eliminate completely the subsidy or to offset completely the amount of the net subsidy, with respect to the merchandise exported directly or indirectly to the United States; or
(2) To cease exports of that merchandise to the United States, within 6 months after the date on which the proceeding is suspended.
(b) Agreements eliminating injurious effect. (1) Generally. An investigation may be suspended at any time before a final determination upon acceptance of an agreement from the government of the country in which the subsidy practice exists, or from exporters accounting for substantially all of the imports of the merchandise which is the subject of the investigation, if it is determined:
(i) extraordinary circumstances are present and
(ii) The agreement will eliminate completely the injurious effect of the imports to the United States of the merchandise which is the subject of the investigation.
(2) Additional requirements. Except for the case of an agreement by a foreign government to restrict the volume of imports of merchandise which is the subject of the investigation, no agreement under paragraph (b) of this section may be accepted unless:
(i) The suppression or undercutting of prices of like domestic products by imports of the merchandise will be prevented; and
(ii) At least 85 percent of the net subsidy will be eliminated or offset with respect to each exporter subject to the agreement.
(c) Definition of "Substantially All." For purposes of section 704(b) and (c) of the Act, exporters who account for "substantially all" of the imports in question shall mean exporters who have accounted for no less than 85 percent by volume of the subject merchandise imported into the United States during the period of investigation, or such other recent, representative period determined appropriate. The number and identity of affected exporters shall be considered no less frequently than once annually in connection with the determination required under section 751 of the Act and, if appropriate, additional or different exporters may be required to furnish assurances to ensure continued applicability of the assurance to the requisite percentage of the affected trade.
(d) Definition of "Extraordinary Circumstances." For purposes of Section 704(c) of the Act, "extraordinary circumstances" shall mean
certain circumstances in which (1) suspension of the investigation will be more beneficial to the domestic industry than continuation of the investigation, and (2) the investigation is complex. For purposes of this section, "complex" shall mean where there are a large number of allegations made or where the agreement is complicated, the issues raised are novel, or the number of exporters involved is large.

(e) Monitoring of agreements. No agreement under section 704 of the Act shall be accepted unless effective monitoring of the agreement is practicable. In accepting assurances and in monitoring compliance therewith, the Secretary shall not be obliged to ascertain on a continuing basis the level of domestic prices of merchandise like that covered by the agreement.

(f) Public Interest. No agreement under section 704 of the Act shall be accepted unless that agreement provides an adequate means of ensuring that the quantity of the merchandise covered by that agreement and exported to the United States during the period provided for the elimination or offset of the subsidy or cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representative period determined to be appropriate to the case. In ordinary circumstances, the representative period shall refer either to the six months preceding the month in which the petition was filed or the comparable six-month period of a year earlier; whichever more accurately reflects the historical level of importation absent import surges. If deemed necessary and appropriate, an order excluding from entry, or withdrawal from warehouse, for consumption, any entries of the subject merchandise in excess of the quantity exported to the U.S. during the period determined to be representative may be issued by the Secretary.

(g) Procedures for suspension of investigations. Prior to accepting any agreement under section 704:

(1) The petitioner shall be notified and consulted with concerning the Secretary's intention to suspend the investigation. A copy of the proposed agreement shall be furnished to the petitioner no less than 30 days prior to the proposed suspension of the investigation unless the agreement shall contain the procedures to be followed to monitor compliance, and a statement of the comparability of the agreement with the requirements of subsections (b) and (d) or (c) and (d) of section 704 of the Act;

(2) All parties to the proceeding shall be notified of the proposed suspension not less than 30 days prior thereto and

(3) All parties to the proceeding and other government agencies which may have an interest in the effects of the agreement shall be afforded an opportunity to submit written comments and information for the record with respect to the proposed suspension.

(i) Issuance of an Affirmative Preliminary Determination. Upon acceptance of an agreement to suspend an investigation, a "Notice of Suspension of Countervailing Duty Investigation" shall be published in the Federal Register, including a summary of the principal provisions of the agreement on the basis of which the investigation was suspended. Unless an Affirmative Preliminary Determination has already been issued, an "Affirmative Preliminary Determination" shall be published together with the notice suspending the investigation.

(ii) Suspension of liquidation. (1) Elimination of subsidy; complete offset of net subsidy or cessation of exports. If an agreement is accepted which provides for the elimination of a subsidy, complete offset of the net subsidy, or cessation of exports of the subsidized merchandise to the United States pursuant to section 704(b) of the Act, then, notwithstanding the issuance of an Affirmative Preliminary Determination, the liquidation of entries of merchandise covered by the agreement shall not be suspended. If liquidation has previously been suspended in the investigation, such suspension shall, without further comment or action, terminate on the date the notice is published and estimated countervailing duties shall be refunded, or other appropriate bonds or security shall be released.

(2) Other suspension agreements. Agreements to suspend an investigation other than those described in paragraph (j)(1) of this section shall not affect the suspension of liquidation of entries of merchandise (except that the security required may be adjusted to reflect the effect of the agreement) until the Commission has completed its review of the suspension agreement, if such review is requested. If no request for review of suspension is received by the Commission within 20 days after the Notice of Suspension of Countervailing Duty Investigation is published, the suspension of liquidation shall, without further comment or action, terminate on the 21st day after such publication.

(k) Commission review. Where the Commission, having undertaken a review of an agreement to suspend an investigation other than one described in paragraph (j)(1) of this section, makes a negative determination, the Secretary shall resume the investigation on the date the public notice of suspension is published. If the affirmative preliminary determination under § 355.28 had been made on that date, the Secretary makes an affirmative determination in such a case, the Secretary shall continue the suspension of the investigation and terminate any suspension of liquidation which may then be in effect, and all estimated countervailing duties shall be refunded and all appropriate bonds or other security shall be released.

(l) Continuation of investigation. By filing a request with both the Secretary and the other agencies which may have an interest in the effects of the agreement, the petitioner on which an agreement is based may extend the time the investigation is continued. Where the agreement is based on the Commission's determination as if the affirmative preliminary determination under § 355.28 had been made on that date, Where the Commission makes an affirmative determination in such a case, the Secretary shall continue the suspension of the investigation and terminate any suspension of liquidation which may then be in effect, and all estimated countervailing duties shall be refunded and all appropriate bonds or other security shall be released.

§ 355.32 - Violations of agreements.

(a) In general. If it is determined that an agreement on the basis of which an investigation was suspended is being, or has been, violated, or no longer meets the requirements of subsections (b) and (d) or (c) and (d) of section 704 of the Act

(1) Liquidation of unliquidated entries of merchandise shall be suspended effective as of the later of the date which is 90 days before the date of
publication of the notice of suspension of liquidation, or the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, was first entered, or withdrawn from warehouse, for consumption;

(2) If the investigation was not completed, the investigation shall be resumed as if an Affirmative Preliminary Determination was made on the day on which the investigation is resumed;

(3) If the investigation was completed a Final Determination shall be made within 75 days after the Preliminary Determination is published, effective with respect to entries the liquidation of which was suspended upon the determination that the agreement had been violated; and

(4) The petitioner, interested parties who are or were party to the proceedings, and the Commission shall be notified and notice of the Determination shall be published in the Federal Register, including a summary of the reasons therefor.

(b) Notice of possible breach. If there is reason to believe that an agreement no longer meets the requirements of the Act or that an agreement is being breached, and the breach involves a violation of the agreement other than that described in paragraph (c), each party to the agreement shall be notified at the earliest moment, so that alternative or amended agreements may be considered before the agreement is deemed violated.

(c) Intentional violations. The intentional violation of any agreement entered into under section 734 of the Act shall subject any person who is party to the agreement and is determined to have intentionally violated it to the same penalties as for a fraudulent violation of section 592 of the Act (19 U.S.C. 1592).

§355.33 Final determinations.

(a) In general. Within 75 days after the date of a Preliminary Determination, a Final Determination shall be made whether a subsidy is being provided with respect to the merchandise subject to the investigation.

(b) Critical circumstances. If critical circumstances have been alleged and an Affirmative Final Determination reached, then it shall include a finding of whether the subsidy is inconsistent with the Agreement, and whether there have been massive imports of the class or kind of merchandise involved over a relatively short period.

(c) Disclosure of information. Promptly after making the Preliminary Determination, there shall be disclosed to each interested party then a party to the proceedings who requests such disclosure, all non-confidential information and, if made available under §355.20, confidential information, on the basis of which the preliminary determination was made.

(d) Opportunity of parties to present views. Prior to the Final Determination, an opportunity shall be provided for all parties to be heard orally in person or by counsel before a designated official pursuant to §355.35. Written views will be received from any person at any time, provided that, unless the Secretary or the officer presiding at the hearing otherwise provides for good cause, consideration of written views may be declined if received more than 10 days after the transcript of any hearing is available to the public or less than 30 days before the Final Determination is due, whichever is earlier.

(e) Notice of Determination. Notice of the Final Determination shall be mailed or otherwise delivered to all parties to the proceeding and the Commission.

(f) Contents of Final Determinations. The Final Determination shall include conclusions with regard to all facts and issues of law considered material to the Determination. If the Determination is affirmative, the amount of the net subsidy shall be estimated and stated, and the nature of the subsidy determined. If separate enterprises have received materially different benefits, such differences shall be estimated and stated.

(g) Effect of Negative Final Determination. If the Final Determination is negative, the proceeding shall be terminated including any suspension of liquidation which may then be in effect, and all estimated countervailing duties refunded and all appropriate bonds or other security released.

(h) Effect of Negative Final Determination by Commission. If the Final Determination by the Commission under section 735(b) of the Act is negative, the proceeding shall be terminated including any suspension of liquidation which may then be in effect, and all estimated countervailing duties refunded and all appropriate bonds or other security released.

§355.34 Submission of information and written views.

(a) Submission of information and written views. Except in situations where it would be manifestly unjust, any information or written views submitted in connection with a proceeding shall be considered only if received within the time established by these regulations or specific instructions applicable to such submission; any information or written views received after such time shall not be considered in the proceeding. Any written views intended to be considered in connection with a proceeding shall be submitted on letter-size paper, double spaced, in at least 10 copies, to the Secretary, Attention: Assistant Secretary for Trade Administration, Room 3850, Department of Commerce, Washington, D.C. 20230. Except when the Secretary determines it will be unduly burdensome to the party to the proceeding, in which case the Secretary shall effect the service, a copy shall also be served at the same time, by mail or personal service, on counsel for each party to the proceeding as of the date of such filing, or if not represented by counsel, then the person designated for such purpose by the party. A certificate of such service shall accompany any such filing.

(b) Designation of agent. Every party to the proceeding shall designate a person to receive service of all papers filed in a proceeding. A list of such designated agents shall be made available by the Secretary.

§355.35 Hearings.

During the course of an investigation, normally within 30 days after the Preliminary Determination is published, a hearing shall be held, upon the request of any party to the proceeding, to provide interested persons an opportunity to present views orally. Such hearing shall be conducted before a designated official. A verbatim record shall be transcribed and copies of the transcript made available to the public. The hearing shall not be subject to the Administrative Procedure Act, and shall not involve the examination or cross examination of witnesses under oath. At the discretion of the officer conducting the hearing, persons not parties to the proceeding, including officials of other agencies or departments of the United States Government, may present views. If not included in the notice of the preliminary determination, notice of such a hearing shall be published in the Federal Register. All requests for hearings shall be accompanied by a statement outlining the issues which the person wishes to discuss. Reasonable notice of the hearing will be given to all parties to the proceeding. One week prior to such a hearing, pre-hearing briefs shall be submitted to the Secretary and exchanged among parties to the proceeding. Persons will be restricted, in their oral presentations, to
§ 355.38 Countervailing duty order. Within seven days of notification by the Commission that it has made an affirmative determination of injury, except for an affirmative determination of injury made pursuant to a request that the investigation be continued under section 704(g) of the Act, or simultaneously with the publication of a final affirmative determination in an investigation involving dutiable merchandise from a non-agreement country, a Countervailing Duty Order shall be published: (a) Directs customs officers to assess a countervailing duty on the merchandise found to be benefiting from a subsidy, equal to the amount of the net subsidy determined or estimated to exist, such assessment to be made within 6 months after the date on which the Secretary has received satisfactory information upon which such assessment may be based, but in no event later than 12 months after the end of the exporter’s annual accounting period within which the merchandise is entered, or withdrawn from warehouse, for consumption; (b) Includes a description of the class or kind of merchandise to which it applies, in such detail as is deemed necessary; (c) Pending liquidation of entries of the merchandise, requires the deposit of estimated countervailing duties in an amount equal to the amount of the net subsidy found to exist, at the same time as estimated normal customs duties on that merchandise are deposited; and (d) Includes information concerning “critical circumstances,” if found to exist.

§ 355.37 Differences in determined and estimated countervailing duties. If the amount of the estimated countervailing duty deposited pursuant to a Preliminary Affirmative Determination is different from the amount of the countervailing duty to be assessed pursuant to a Countervailing Duty Order, the difference with respect to merchandise entered, or withdrawn from warehouse, for consumption before publication of notice of the Commission’s affirmative final determination or, in those investigations involving dutiable merchandise from non-agreement countries, the Secretary’s final determination shall be: (a) Disregarded, to the extent that the estimated duty is less than the duty determined to be assessable under the Order; or (b) Refunded, to the extent that estimated duties collected were more than the duty determined to be assessable under the Order.

§ 355.39 Verification of information; Use of best information available. (a) Information upon which a Final Determination is based shall be verified. The methods and procedures used to verify information in a particular case shall be published in the Federal Register in the “Notice of Affirmative Final Countervailing Duty Determination,” or “Notice of Negative Final Countervailing Duty Determination,” as appropriate. (b) Whenever information cannot be satisfactorily verified, or is not submitted in timely fashion or in the form required, the submitter of the information will be notified and the affected determination will be made on the basis of the best information then otherwise available, which may include the information submitted in support of the petition. An opportunity to correct inadequate submissions will be provided if the corrected submission is received in time to permit proper analysis and verification of the information concerned; otherwise no corrected submission will be taken into account. Where a party to the proceeding unreasonably refuses to provide requested information, that fact may be taken into account in determining what is the best available information. (c) In verifying information under this section, access to files, records and personnel with relevant information may be requested by appropriate officers of the Secretary as a part of the verification process. In addition to information relating to alleged subsidies, information as to sales (including customers) and prices thereof on sales to the United States during the period of investigation by foreign manufacturers, producers or exporters shall be requested. Failure to permit such access may prevent satisfactory verification and require the application of paragraph (b).

(d) All responses to requests for information must be in English and in the form requested unless such requirement is waived. Failure to supply information in the form requested may require the application of paragraph (b).

(e) Responses to all questionnaires directed to foreign parties shall be forwarded by airmail or faster means simultaneously to the Secretary and to the U.S. Embassy in the country in question and shall be deemed timely received if received at either office within the time required by any specific request, order or regulation.

§ 355.40 Interest on certain overpayments and underpayments. Interest shall be payable, at the rate in effect under section 6621 of the Internal Revenue Code of 1954 on the date on which the rate or amount of duty is finally payable, or 8 percent, whichever is higher, on overpayments and underpayments of amounts deposited on merchandise entered, or withdrawn from warehouse, for consumption or after the date on which notice of an affirmative determination by the Commission with respect to that merchandise is published.

§ 355.41 Administrative Review of Determinations. (a) In general. At least once during each 12-month period beginning on the anniversary of the date a Countervailing Duty Order or notice of the suspension of an investigation is published, the amount of any net subsidy or the status of, and compliance with, any agreement by reason of which an investigation was suspended, shall be redetermined. (b) Changed circumstances. (1) Whenever the Secretary receives information concerning, or a request for the review of a Countervailing Duty Order or an agreement on the basis of which an investigation was suspended which shows changed circumstances sufficient to warrant review of such Order or agreement, in whole or in part, before conducting such review, publish a “Notice of Intention to Review Suspension Agreement or “Notice of Intention to Review Countervailing Duty
order in the Federal Register. Such Notice shall indicate the merchandise concerned and any changed circumstances or other significant issues then known which will be considered during the review.

(2) In the absence of good cause shown, no review based on allegations of changed circumstances shall be conducted within 24 months after the date of an Affirmative Final Determination or a determination to suspend an investigation.

(c) Procedures. Written views on proposed revisions of a Countervailing Duty Order, including new facts for examination, will be accepted at any time, but unless changed circumstances are alleged, normally will not be processed sooner than 90 days before such redetermination is due for publication. Questionnaires requesting current relevant data will normally be sent 85 days before such date, requesting reply within 30 days of receipt.

(d) Disclosure and hearings. A disclosure may be made, generally about 30 days prior to the date the redetermination is due for publication, on request by parties then party to the proceeding, to such interested parties of all non-confidential information and, where appropriate, pursuant to a protective order, confidential information, on the basis of which the redetermination will be made. Written views may be presented, and an opportunity to present oral views may be requested, by any party to whom disclosure was made. After providing an opportunity for comment by interested parties on the proposed determination, a revised Countervailing Duty Order, including any revised bases for the assessment of duties on the merchandise, shall be published in the Federal Register.

§ 355.42 Revocation of Countervailing Duty Order and termination of suspended investigation.

(a) In general. Whenever the Secretary determines that a subsidy within the meaning of section 771(9) of the Act is no longer being bestowed upon the manufacture, production or exportation of merchandise which is the subject of a Countervailing Duty Order and is satisfied that there is no likelihood of resumption of the subsidy, he may act to revoke or terminate, in whole or in part, such order or suspended investigation. Ordinarily, consideration of such revocation or termination will be made by the Secretary, after a timely request for review, in accordance with the procedures set forth in section 776 of the Act. If in the course of a review, the Secretary determines that a subsidy is being bestowed upon the manufacture, production or exportation of merchandise which is the subject of a Countervailing Duty Order and is satisfied that there is no likelihood of resumption of the subsidy, he may act to revoke or suspend the order or investigation.

(b) Application to revoke or terminate. An application for the revocation of any Order or the termination of a suspended investigation, premised upon the lack of a legal basis for the imposition of countervailing duties, may be submitted in writing by an interested party to the Secretary together with detailed information demonstrating that the imported merchandise no longer benefits from a net subsidy. Ordinarily, such an application will be considered only if the production, manufacture, or exportation of the merchandise has been without benefit of a net subsidy for at least a two-year period following the date of publication in the Federal Register of a Countervailing Duty Order or notice of suspension of investigation:

provided, however, that where a firm can demonstrate that neither the production nor exportation of the merchandise had benefitted from a net subsidy during the period of or immediately prior to the investigation (but the firm did not file a timely application for exclusion under § 355.38), the two-year period shall begin on the date of the preliminary determination regardless of whether that determination was affirmative or negative.

(c) Revocation or termination by the Secretary. The Secretary may on his own initiative revoke an Order or terminate a suspended investigation after three years if he is satisfied that (1) there is no likelihood of resumption of imports of the merchandise to the United States, the production, manufacture or export of which benefitted from a net subsidy, or (2) the subsidy itself, has been eliminated or (3) other changed circumstances which exist warrant a revocation of an Order or the termination of a suspended investigation.

(d) Revocation or termination based upon injury reconsideration. [Reserved.]

(e) Notice of revocation or termination. If it appears to the Secretary from his review under section 751 of the Act and an application filed pursuant to paragraph (a) of this section (or from his own determination under paragraph (b) of this section) that a revocation or termination may be appropriate, he will publish a "Notice of Tentative Determination to Revoke or Terminate." Before the Secretary may tentatively revoke an Order or terminate a suspended investigation pursuant to paragraph (a) of this section the parties who are subject to the revocation or the termination must agree in writing to an immediate suspension of liquidation and reinstatement of the Order or continuation of the investigation, as appropriate, if circumstances develop which indicate that the merchandise thereafter imported into the United States is benefitting from a net subsidy on its manufacture, production or exportation. Opportunity for interested parties to present views with respect to the tentative revocation will be provided.

(f) Final determination. As soon as possible after publication of a "Notice of Tentative Determination to Revoke or Terminate" the Secretary will determine whether final revocation or termination is warranted. In cases where an application for a revocation or termination is based on the absence of a net subsidy with respect to the imported merchandise and the dispositive date for establishing a two-year period of net subsidy is the date of publication of the Order, the Secretary may determine that a final revocation or termination is warranted only if the firm involved provides information showing no receipt of a net subsidy with respect to the subject merchandise up to the date of publication of the "Notice of Tentative Determination to Revoke or Terminate." Ordinarily, a revocation or termination will be effective with respect to all merchandise, which is the subject of the revocation or termination, entered, or withdrawn from warehouse, for consumption or on or after the date on which the "Notice of Tentative Determination to Revoke or Terminate" is published in the Federal Register. The liquidation of all merchandise which is the subject of a tentative revocation or termination and which is entered, or withdrawn from warehouse, for consumption on or after the date of publication or the "Notice of Tentative Determination to Revoke or Terminate," will be ordered suspended pending the final determination on revocation or termination.

§ 355.43 Subsidy practices discovered during an investigation.

If, during an investigation, a practice is discovered which appears to be a subsidy with respect to the merchandise under investigation, which practice was not included in the allegations in the petition, that practice shall be included in the scope of the investigation if the Secretary determines it is practicable in light of the time limits applicable to such investigation. If not practicable, the Secretary shall either (a) allow the petitioner to withdraw the petition and resubmit it including any newly discovered subsidy practice or (b) initiate a separate investigation of the newly discovered subsidy practice. In all cases, the parties to the proceeding...
shall be notified of any practice discovered and whether it will be included in the investigation. Failure to include any practice so discovered in a pending investigation is without prejudice to its consideration pursuant to § 355.41.


(a) The Secretary shall establish a library of information relating to foreign subsidy practices and countervailing measures. Copies of material in the library shall be made available to the public upon payment of the costs of preparing such copies. The fees charged for providing copies shall be the same as for providing copies pursuant to requests made under the Freedom of Information Act (5 U.S.C. 552) (see 15 CFR 4.9).

(b) Information on subsidy practices which are the subject of an investigation with respect to merchandise not the subject of the investigation (other than confidential information) shall be transferred to the library.

Annex I.—Administrative and Interpretative Guidelines for Determination and Calculation of Subsidies

1. The physical incorporation test: The non-excessive rebate or remission of indirect taxes (sales, value-added, and consumption taxes) is not regarded as a subsidy. However, when a system of indirect taxation operates in such a manner that the full amount of the tax is not directly assessed on the product in question, at a time when it is in substantially the condition in which it would be exported, the physical incorporation test is applied. Under that test, the rebate or remission of fiscal charges on items physically incorporated in the exported product is not considered a subsidy. Rebated taxes on services, catalysts and other items (e.g., energy) not incorporated in the product (or necessary waste), however, directly related to the production and exportation of the merchandise, would be treated as an excessive rebate and, therefore, a subsidy.

2. Export payments as an estimate of indirect taxes paid: Generally the payment to an exporter, of a lump sum calculated and identified as a non-excessive rebate of the indirect tax incidence on the exported product, and its components, will not be treated as a subsidy if the government has reasonably calculated and documented the actual tax experience of the product under investigation.

3. Drawback of duties: The drawback, rebate or remission of Customs duties not in excess of the actual duties due or paid, on imported items physically incorporated in the final product is not regarded as a subsidy. The drawback remission or drawback of duties on imported capital goods or other items involved in the production but not physically incorporated in the exported merchandise would be counteravailable.

4. Income and social security taxes: The rebate of or reduction in the amount of direct taxes imposed on an exported product is generally regarded as a subsidy. Similarly, special (industry specific) income tax provisions which apply irrespective of export performance may constitute a subsidy to the extent that the provisions deviate from the normal tax provisions of the country in question. For purposes of assessing a countervailing duty, the savings derived from this benefit ordinarily would be allocated over the recipient company’s production of the merchandise during the most recent business year.

5. Effect of inflation or devaluation on the value of the net subsidy: The value of a subsidy may be diminished in certain circumstances because of delayed payment during a period of inflation or currency devaluation. Allowance for the reduction in value of the subsidy will be made only where the Government of the exporting country specifically provides by decree or regulation that the payment of the subsidy amount be delayed.

Administrative delays in payment are not regarded as “mandated” within the meaning of section 771(6)(B) of the Act. The loss of value is calculated on the basis of the potential interest earned in the country of exportation during the period of delayed payment.

Annex II.—Countries Which Have Signed the Agreement [Reserved]

Annex III.—Countervailing Duty Orders Currently in Effect

<table>
<thead>
<tr>
<th>Country</th>
<th>Commodity</th>
<th>Treasury decision</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>Textile mill products and men's and boys' apparel</td>
<td>78-445</td>
<td>Bounty declared—rate.</td>
</tr>
<tr>
<td></td>
<td>Nonrubber footwear</td>
<td>79-18</td>
<td>Bounty declared—rate.</td>
</tr>
<tr>
<td></td>
<td>Sugar content of certain articles</td>
<td>35541</td>
<td>Declared rate.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>49157</td>
<td>New estimated rate.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>52923</td>
<td>Contingent suspension of rates.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>54582</td>
<td>New rates.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>55716</td>
<td>Certain articles exempted as to shipments exported on or after Jan. 1, 1962.</td>
</tr>
<tr>
<td>Austria</td>
<td>Butter</td>
<td>74-133</td>
<td>New rates.</td>
</tr>
<tr>
<td></td>
<td>Cheese</td>
<td>75-54</td>
<td>New rate.</td>
</tr>
<tr>
<td></td>
<td>Dairy products</td>
<td>76-167</td>
<td>New rate.</td>
</tr>
<tr>
<td></td>
<td>Canned hams and canned shoulders</td>
<td>42507</td>
<td>Bounty declared—rates.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>42508</td>
<td>New rates.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>46531</td>
<td>New estimated rate.</td>
</tr>
<tr>
<td>Belgium</td>
<td>Footwear, non-rubber</td>
<td>76-10</td>
<td>Bounty declared—rate.</td>
</tr>
<tr>
<td></td>
<td>Leather handbags</td>
<td>76-1</td>
<td>Imposition of countervailing duties waived.</td>
</tr>
<tr>
<td></td>
<td>Certain castor oil products</td>
<td>75-113</td>
<td>Bounty declared—rate.</td>
</tr>
<tr>
<td></td>
<td>Yarn</td>
<td>75-114</td>
<td>Imposition of countervailing duties waived.</td>
</tr>
<tr>
<td>Brazil</td>
<td>Scissors and shears</td>
<td>75-300</td>
<td>Bounty declared—rate.</td>
</tr>
<tr>
<td></td>
<td>Textile mill products and men's and boys' apparel</td>
<td>75-301</td>
<td>Imposition of countervailing duties waived.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>74-233</td>
<td>Bounty declared—rate.</td>
</tr>
<tr>
<td></td>
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<td>76-2</td>
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<td>78-446</td>
<td>Bounty declared—rate.</td>
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Annex 111.—Countervailing Duty Orders Currently in Effect—Continued

<table>
<thead>
<tr>
<th>Country</th>
<th>Commodity</th>
<th>Treasury</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>Cheese, 93-94 score from whole milk, cheddar, including &quot;washed curd&quot; types</td>
<td>50093</td>
<td>Bounties declared—rates.</td>
</tr>
<tr>
<td></td>
<td>Cheese, 93-94 score, blue-vein, of Roquefort type</td>
<td>53182</td>
<td>Bounties declared—rates.</td>
</tr>
<tr>
<td></td>
<td>3-x-radial steel belted tires manufactured by Michelin Tire Manufacturing Company of Canada, Ltd.</td>
<td>59147</td>
<td>Discontinued as to cheese manufactured on or after Apr. 1, 1968.</td>
</tr>
<tr>
<td></td>
<td>Glass beads</td>
<td>7310</td>
<td>Bounty declared—rate.</td>
</tr>
<tr>
<td></td>
<td>Groundfish</td>
<td>74-237</td>
<td>New estimated rate.</td>
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<tr>
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<td>Groundfish</td>
<td>74-254</td>
<td>Final rate declared.</td>
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<td>Pain</td>
<td>76-247</td>
<td>Bounty declared—rate.</td>
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<td>Optic Liquid level sensing probes</td>
<td>76-128</td>
<td>Bounty declared—rate.</td>
</tr>
<tr>
<td></td>
<td>Leather</td>
<td>76-173</td>
<td>Bounty declared—rate.</td>
</tr>
<tr>
<td></td>
<td>Cube</td>
<td>76-174</td>
<td>Bounty declared—rate.</td>
</tr>
<tr>
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<td>Canned hams and canned shoulders</td>
<td>78-181</td>
<td>Bounty declared—rate.</td>
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<tr>
<td></td>
<td>Butter cookies</td>
<td>79-07</td>
<td>Bounty declared—rate.</td>
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<tr>
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<td>Dairy products</td>
<td>79-09</td>
<td>Bounty declared—rate.</td>
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<td>Canned hams and canned shoulders</td>
<td>79-10</td>
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<tr>
<td></td>
<td>Butter</td>
<td>79-12</td>
<td>Bounty declared—rate.</td>
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<td>Canned hams and canned shoulders</td>
<td>79-109</td>
<td>Bounty declared—rate.</td>
</tr>
<tr>
<td></td>
<td>European Communities (consisting of France, the United Kingdom, West Germany, Luxembourg, Ireland, the Netherlands, Denmark, Italy, and Belgium.)</td>
<td>79-233</td>
<td>New rate.</td>
</tr>
<tr>
<td></td>
<td>Declines and soluble or chemically treated starches derived from potato starch</td>
<td>79-233</td>
<td>New rate.</td>
</tr>
<tr>
<td></td>
<td>Tomato products</td>
<td>75-300</td>
<td>Bounty declared—rate.</td>
</tr>
<tr>
<td></td>
<td>Sugar</td>
<td>75-301</td>
<td>Bounty declared—rate.</td>
</tr>
<tr>
<td></td>
<td>Cheese</td>
<td>75-113</td>
<td>Bounty declared—rate.</td>
</tr>
<tr>
<td></td>
<td>Canned hams and canned shoulders</td>
<td>75-114</td>
<td>Bounty declared—rate.</td>
</tr>
<tr>
<td></td>
<td>Canned hams and canned shoulders</td>
<td>75-301</td>
<td>Bounty declared—rate.</td>
</tr>
<tr>
<td></td>
<td>Great Britain</td>
<td>75-300</td>
<td>Bounty declared—rate.</td>
</tr>
<tr>
<td></td>
<td>Syrups</td>
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<tr>
<td></td>
<td>Sugar</td>
<td>75-113</td>
<td>Bounty declared—rate.</td>
</tr>
<tr>
<td></td>
<td>Dairy products</td>
<td>75-114</td>
<td>Bounty declared—rate.</td>
</tr>
<tr>
<td></td>
<td>Canned hams and canned shoulders</td>
<td>75-300</td>
<td>Bounty declared—rate.</td>
</tr>
<tr>
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<td>75-301</td>
<td>Bounty declared—rate.</td>
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<tr>
<td></td>
<td>Sugar</td>
<td>75-300</td>
<td>Bounty declared—rate.</td>
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<td>Dairy products</td>
<td>75-301</td>
<td>Bounty declared—rate.</td>
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<td>Canned hams and canned shoulders</td>
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<td>Bounty declared—rate.</td>
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<td>Canned hams and canned shoulders</td>
<td>75-301</td>
<td>Bounty declared—rate.</td>
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### Annex IIL—Countervailing Duty Orders Currently in Effect—Continued

<table>
<thead>
<tr>
<th>Country</th>
<th>Commodity</th>
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<th>Action</th>
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</thead>
<tbody>
<tr>
<td>Italy</td>
<td>Galvanized fabricated structural steel units for the erection of electrical transmission towers.</td>
<td>67-102</td>
<td>Bounty declared—rate.</td>
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<td></td>
<td>Canned tomatoes and canned tomato concentrates</td>
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<tr>
<td></td>
<td>Steel welded wire mesh</td>
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</tr>
<tr>
<td></td>
<td>Skis and parts thereof</td>
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<tr>
<td></td>
<td>Certain steel products, compressors and parts thereof</td>
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<tr>
<td></td>
<td>Refrigerators, treaters, other refrigerating equipment, and parts thereof</td>
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<tr>
<td></td>
<td>Die presses</td>
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<td>Dairy products</td>
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<td>Canned hams and canned shoulders</td>
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<td>India</td>
<td>Cap screws, 1/4&quot; in diameter and over, of iron or steel</td>
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<td>Cheese</td>
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<tr>
<td>Japan</td>
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<td></td>
<td>Certain fasteners</td>
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<td>Nuts, bolts, and capscrews</td>
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<td>Iron and steel chains and parts thereof</td>
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<td>Bicycle tires and tubes</td>
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<td>Mexico</td>
<td>Carbon steel and high strength steel plate</td>
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<td>Norway</td>
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<td>Pakistan</td>
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<td>Republic of Korea</td>
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<td>Japan</td>
<td>Bottled green olives</td>
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<td>Non-rubber footwear</td>
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<td>Iron or steel chains and parts thereof</td>
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<td>Emmenthaiser and Gruyere cheese</td>
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<tr>
<td>Japan</td>
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<td>Korea</td>
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<td>Switzerland</td>
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<td>Sweden</td>
<td>Leather Handbags</td>
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<td>West Germany</td>
<td>Textile mill products and men's and boys' apparel</td>
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<td>75-114</td>
<td>Imposition of countervailing duties waived.</td>
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<td>75-201</td>
<td>Imposition of countervailing duties waived.</td>
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