Revised Countervailing Duty Regulations of the United States

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

In accordance with Article 19.5(b) of the Agreement, my authorities wish to inform the Committee of a revision to the regulations on countervailing duty proceedings (19 C.F.R. Part 355). The purpose of the revision, as described in the summary of the attached notice of Final Rule, is as follows:

"The International Trade Administration hereby revises its regulations on countervailing duty proceedings to implement the provisions in Title VI of the Trade and Tariff Act of 1984 concerning countervailing duties and to modify in other respects provisions in the version of Part 355 that has been in effect since 1980. The modifications are intended to improve administration of the countervailing duty provisions of the Tariff Act of 1930."

*English only/anglais seulement/ingles solamente

89-0547
DEPARTMENT OF COMMERCE
International Trade Administration

19 CFR Part 355
[Docket No. 50448-8214]

Countervailing Duties

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

ACTION: Final rule.

SUMMARY: The International Trade Administration hereby revises its regulations on countervailing duty proceedings to implement the provisions in Title VI of the Trade Act of 1988 concerning countervailing duties and to modify in other respects provisions in the version of Part 355 that has been in effect since 1980. The modifications are intended to improve the administration of the countervailing duty provisions of the Tariff Act of 1930.

EFFECTIVE DATE: The effective date of this Part 355 is January 26, 1989 except that the effective date of §355.22(a) and (c) of this Part 355 is March 1, 1989.


SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

The International Trade Administration ("ITA") has determined that this final revision of the existing countervailing duty regulations in 19 Code of Federal Regulations ("CFR") Part 355 is not a major rule as defined in section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981) because it will not: (1) have a major monetary effect on the economy; (2) result in a major increase in costs or prices; or (3) have a significant adverse effect on competition (domestic or foreign), employment, investment, productivity, or innovation.

Executive Order 12612

These regulations do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612 (52 FR 41685, October 30, 1987).

Paperwork Reduction Act

The information collection requirement contained in 19 CFR Part 355 has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and has been assigned OMB control number 0625-0148. ITA estimates an average of 40 burden hours to submit a petition. Any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden may be sent to the Department at the above address or to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small business entities because, to the extent it changes existing practices, the rule simply improves the administration of the countervailing duty provisions of the Tariff Act of 1930, as amended. As a result, a Regulatory Flexibility Analysis was not prepared.

Background


Some of the changes to the existing countervailing duty regulations are necessary to implement the amendments made by the 1984 Act. Other changes: (1) incorporate existing administrative interpretations and practices, not currently stated in the regulations, that will continue under the amended statute; (2) improve administrative efficiency in countervailing duty proceedings; and (3) simplify the language of existing regulations. The Department currently is drafting a proposed rule and request for comments to implement the amendments made by the Omnibus Trade and Competitiveness Act of 1988 ("1988 Act"). This final rule does not reflect changes required by the 1988 Act, except that we have referred to certain changes made by the 1988 Act in response to comments on §§355.21, 355.21(l), 355.21(a), 355.15, 355.16(b), and 355.34(a). The final rule printed here (Part 355) replaces the entire text of Part 355 that has been in effect since January 22, 1980 (45 FR 4932).

The Department has considered carefully all of the comments received in response to the proposed rule and request for comments on 19 CFR Part 355 that was published on June 10, 1985 (50 FR 24207). These comments, and the Department's responses to them, are summarized below.

Index

Comment: One party suggests that the Department establish a "unified sub-index" of time limits.

Department's Position: We agree that a consolidated listing of time limits might be helpful. We have added as Annex II a list of time limits and a reference to the section in which each appears.

Sec. 355.1

Comment: One party suggests that the Department add a paragraph specifically setting forth the times when an injury test is required under section 303 of the Act. For example, an injury test is required for duty-free products from signatories to the General Agreement of Tariffs and Trade ("GATT").

The same party also requests that the Department specifically state the procedures to be followed in a proceeding when a country becomes a "country under the Agreement."

Department's Position: The question of when injury tests are required is not an appropriate rulemaking issue for the Department of Commerce ("the Department"). The Department does agree that it could not impose countervailing duties on dutty-free imports from GATT signatories absent an injury test.

Information on the procedures to be followed when a country becomes a country under the Agreement on Interpretation and Application of Articles VI, XVI, and XXII of the GATT ("The Agreement") is contained in sections 102 and 104 of the Trade Agreements Act, 19 U.S.C. 1871 note. For countries that become countries under:
the Agreement after the dates specified in these provisions, procedures will be based on the accord's surrounding signature of the Subsidies Code, other agreements, and the U.S. Trade Representative's ("USTR") declaration that the country is to be accorded country under the Agreement status. No rulemaking is required.

Sec. 355.2(b)

Comment: One party wants to know if "like product" should be defined.

Another party argues that the regulation improperly deletes part of the statutory definition of industry and authorizes the exclusion of importers from the industry. The legislative history of the 1984 Act shows that section 771(4)(B) was intended to allow the Commission to exclude importers in injury determinations, not to allow the Department to do so in determining standing to file a petition.

Another party requests that the Department affirm its practice of permitting that a petitioner has filed an action on behalf of an industry unless and until significant opposition from other domestic producers has been presented. This party also is troubled by the reference to "the like product" (emphasis added) in the first sentence of the proposed regulation. The party argues that the use of the word "the," combined with the Department's stated intention to consult with the International Trade Commission ("Commission") on the decision concerning the like product, is overly restrictive, likely to be contentious, and goes beyond the legislative intent of the standing requirement—"to prevent companies or individuals with no interest from commencing an investigation." Furthermore, this party believes that the Department's proposal would permit circulation of the decision in *Roses Inc. v. United States*, 706 F.2d 1563 (Fed. Cir. 1983), which does not permit the Department to receive views from importers or foreign producers prior to a determination to initiate.

Department's Position: We see no need to attempt a more precise definition than that contained in section 771(10) of the Act. The substantial body of determinations by the Commission, as well as the practice before that agency, provide a substantial basis for understanding what the term means. The party's history does not explicitly address standing and the requirements in discussing the definition of "industry." The meaning of "industry" is integral not only to the Commission's determinations of injury but also to the Department's decision on standing.

under subsection 702(b)(1) of the Act. The proposed regulatory definition highlights those parts of the definition in section 771(4) of the Act which are relevant to standing. The part of the definition which refers to producers of a "major proportion" of the total domestic production is not pertinent to standing because applying it could result in a petition that has the support of just over one quarter of the domestic industry, as the following analysis shows. Section 702(b)(1) requires that a petition be filed "on behalf of" an industry. Both the Court of International Trade, in *Gilmore Steel Corp. v. United States*, 7 CIT 219 (1984), and the Department, in Certain Textile Mill Products and Apparel from Malaysia, 50 FR 9832 (1985), interpret the "on behalf of" language to mean that standing can be defeated if a majority of the concerned industry opposes the petition. If "industry" is defined as a simple majority ("a major proportion") of total domestic production, and "on behalf of" is also a mere majority, then a petitioner filing "on behalf of" producers of a "major proportion" of total domestic production, arguably opposition by even a substantial majority of U.S. producers would not suffice to show lack of standing. This result was not intended by the requirement to file on behalf of an industry. Because this conclusion contradicts and confuses the intent of the requirement to file on behalf of an industry, the "major proportion" of the industry element of the definition is not pertinent for standing purposes.

As to our proposed inclusion of the related party provision of section 771(4)(B) of the Act, the Court in *Gilmore* indicated that it believes the Department may exclude importers from the industry for standing purposes if appropriate. 7 CIT at 223–27 (dicta). The Department has used this provision on a number of occasions. See, e.g., *Frozen Concentrated Orange Juice from Brazil*, 52 FR 8324 (1987); *Fabricated Auto Glass from Mexico*, 50 FR 19108 (1985). The Department finds the proposed regulatory definition to be the appropriate one for purposes of identifying those producers with a stake in the outcome. *Gilmore Steel Corp. v. United States*, 7 CIT at 224. For these reasons, these sections the Department assumes have been adopted.

As we stated in *Certain Textile Mill Products and Apparel from Malaysia*, 50 FR 9832, 9833 (1985), the holding in *Gilmore* "does not amount to a requirement that a petitioner somehow prove, before a petition is filed, that at least 51 percent of an industry has expressed itself in support of a petition." The proposed rule would not disturb existing practice in this regard.

The phrase "the like product" appears in the existing regulation and its use here will not result in a change in agency practice. The use of "the," as opposed to "a," is referring to like product and the Department's intention to consult with the Commission are not intended to be overly restrictive or to go beyond Congressional intent with respect to the standing requirement. Pre-initiation communications with the Commission at the staff level, in accordance with the Department's pre-initiation communications with the Commission. Sec. 355.2(f)(3), (f)(4), and (f)(5)

Comment: One party contends that in defining "interested party," retailers should not be excluded per se. Retailers should have the opportunity to participate if the Department's determination will affect them.

Department's Position: Section 771(h) of the Act is limited to resellers at the wholesale level. In accordance with current practice, we have revised paragraphs (j)(3), (j)(4), and (j)(5) to refer to sellers of the like product produced in the United States.

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

Sec. 355.2 (j) and (o)

Comment: Two parties state that in these sections the Department assumes that it has the authority to terminate investigations on the basis of rescissions of initiations or investigations. The Act does not confer such authority. Either the Department should delete the provision or promulgate rules stipulating the claimed legal authority and the conditions under which such rescissions will occur.

Department's Position: The Department has the authority to reconsider a determination to initiate an investigation. The Department finds the proposed regulatory definition to be the appropriate one for purposes of identifying those producers with a stake in the outcome. *Gilmore Steel Corp. v. United States*, 7 CIT at 224. For these reasons, these sections the Department assumes have been adopted. We see no need to attempt a more precise definition than that contained in section 771(10) of the Act. The substantial body of determinations by the Commission, as well as the practice before that agency, provide a substantial basis for understanding what the term means. The party's history does not explicitly address standing and the requirements in discussing the definition of "industry." The meaning of "industry" is integral not only to the Commission's determinations of injury but also to the Department's decision on standing.
investigation and to act to correct manifest error which taints the proceeding. The issue considered in Gilmore Steel Corp. v. United States, 7 CIT 219 (1984) was standing. Since 1983, the Department has rescinded all or parts of initiations in ten cases. Several dealt with standing, two with the issue of subsidies in nonmarket economies, and one with programs previously found not to be countervailable. See, e.g., Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986); Certain Textile Mill Products and Apparel from Turkey, 50 FR 9180 (1985); Unprocessed Float Glass from Mexico, 48 FR 56095 (1983).

We note that because a suspension of investigation does not "end" an investigation, we have deleted that phrase from paragraph (l).

Sec. 353.2(k)
Note: As stated in the preamble to the proposed rule, paragraph (k) defines "the merchandise." The definition avoids continual repetition throughout the regulations of the phrase "the class or kind of merchandise imported or sold, or likely to be sold, for importation into the United States, that is the subject of the proceeding." Section 353.2(l)

Comment: All parties commenting on this section object to the limitation of "parties to the proceeding" to those which participate in a particular decision by the Secretary through the submission of factual information or written argument. The parties generally argue that the provision is an attempt by the Department to define, without statutory authority, the jurisdiction of Federal courts. One party argues that the problem is the Department's power to interpret section 303 of this Act or Title VII of this Act to "define the term "party to proceedings" to those parties to the proceeding under section 774(a)(1), dealing with requests for hearings.

As to the arguments that the Department is attempting to limit a party's right to appeal to the court, we believe the court's recent decisions prove too much. It is the province of Congress to regulate trade, but that does not argue that the Department has no authority to interpret statutory enactments on trade matters through its regulations. Section 516A(d) of the Act limits standing before the court to "[a]ny interested party who was a party to the proceeding under section 303 of this Act or title VII of this Act "..." Those proceedings are administrative processes carried out before the Department and subject to its rules. We believe the court will benefit from the agency's expertise as to the minimum participation in the administrative process that will make possible the party's exhaustion of its administrative remedies, so that the time of the court and the parties will not be spent needlessly on matters that could have been addressed and resolved by the agency in the first instance. The court may disagree in the circumstances of a particular case that adherence to the regulatory requirements was consistent with Congressional intent, but that does not argue for ignoring our obligation to ensure, to the extent possible, the orderly, efficient, and equitable implementation of the law.

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

Sec. 353.2(p)

Comment: Several parties state that by limiting the definition of "likely sale" to an "irrevocable offer to sell," the Department has in effect limited the Commission's ability to consider a case in which revocable offers to sell may be found to constitute a threat of material injury. One party suggests that we modify the regulation either by dropping the requirement that offers be irrevocable or by creating a rebuttable presumption that all offers are irrevocable.

Another party objects to the Department's practice (stated in the preamble to the proposed rule) of considering likely sales only in the event that there are no consummated sales in the relevant foreign markets. For instance, the party cites the possibility that a foreign bid for a major long-term contract may be subsidized, forcing domestic producers to restructure their proposals in order to remain competitive, even though other recent sales by the same foreign producers are not subsidized.

Another party states that it is inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade ("the Agreement") to initiate an investigation before the merchandise is imported.

Department's Position: The Department has defined the term "likely sale" in order to cover the situations where actionable unfair trade practices can be reasonably expected to exist. The issue to be addressed is the likelihood that a sale will be made. In our view, that can occur only when an offer is irrevocable for some time period sufficient to indicate a likelihood of sale. Revocable offers encompass such a wide spectrum of activities as to provide no measure of the likelihood of sales. The definition would not preclude the Commission from considering revocable offers in determining the threat of injury, provided that the Department has initiated an investigation. We have decided to retain the requirement that offers be irrevocable, without adding a rebuttable presumption, because we believe the provision is administrable and reasonable as drafted.

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

Department of Commerce

International Trade Administration

19 CFR Part 355
Countervailing Duties; Final Rule
Regarding initiations prior to importation of the merchandise, the regulation is based on the U.S. statute, which itself is consistent with the Agreement. The GATT (Article VI) and the Agreement (Article 2) permit the importing country to commence an investigation to determine the existence, degree, and effect of any alleged subsidy on merchandise once it becomes apparent that a particular import will benefit from subsidies. Evidence of an irrecoverable offer to sell or a sale is sufficient evidence to satisfy the requirement in Article 2 that there be “subsidized imports.” It would undermine the purpose of the GATT and the Agreement to interpret narrowly and literally the phrase “subsidized imports” in Article 2(1). Neither the Agreement nor the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade requires such an interpretation. In certain situations, such as large capital equipment purchases, implementing the Agreement’s authority to impose countervailing duties on “subsidized imports” requires that the investigation be initiated prior to the actual importation. See, e.g., Railcars from Canada, 48 FR 6566 (1983). We believe the drafters of the Agreement intended that the contrary interpretation reduces the Agreement’s authority to a nullity in those situations. Of course, no countervailing (or antidumping) duties are levied until the merchandise is imported in the formal Customs sense.

Although all of the comments focused on the likely issue of late actions by (mother party or submitter) any investigation or review. Therefore, we believe that the verifiers personal notes and verification documents that are neither important nor material to the factual assertions in the verification (except as secondary corroboration) should be included in the official record.

We believe that our retention as part of the official record of untimely submitted documents would erode the principle of timely filings and in turn would jeopardize our ability to review submissions with care within the statutory deadlines for completion of an investigation or review. Therefore, we will not include in the official record any untimely filings. We do not believe that any party should be disadvantaged as a result of late actions by another party or by the Department. The Department, therefore, will strictly enforce its deadlines to avoid such results.

We note that we have clarified that documents returned to a submitter under §§ 355.31(b)(2) and 355.32(g) will not be included in the official record. All untimely or nonconforming submissions will be returned to the submitter with written notice stating the reasons for return of the documents. The written notice, which will detail the untimely or nonconforming nature of the submission, will be placed in the record of the proceeding.

Sec. 355.3(b)

Comment: One party contends that the public record of proceedings should contain material that can be disclosed to the public, rather than just what “the Secretary decides can be disclosed.” Another party also seeks uniformity between the definitions of “public record” and “public information.” It is not clear whether all “public information” would have to be included in the public record.

Department’s Position: The Department believes there may be some ambiguity between §§ 355.3(b) and 355.4(a). We are altering the second sentence of § 355.3(b) to read as follows: “The record will consist of all material described in paragraph (a) of this section that the Secretary decides is public information within the meaning of § 355.4(a).”

Sec. 355.4

Comment: One party suggests that § 355.4 come immediately before § 355.42 for unity of subject matter. Also, § 355.33 is redundant in view of § 355.4.

Department’s Position: Although the text of § 355.4 logically could be placed in Subpart C, we prefer to leave that text in Subpart A. As for the second point, we believe § 355.4 is definition and § 355.33 is operational.

Sec. 355.4(a)

Comment: One party states that the Department’s proposed standards for proprietary treatment are inadequate. Under the regulation, factual information in a form which cannot be associated with or used to identify a particular firm nonetheless may be proprietary for that firm. An example would be marketing strategies.

Another party suggests the inclusion of those portions of the Department’s memoranda, memoranda of ex parte meetings, and transcripts cited at §§ 355.3(a) which do not contain proprietary, privileged, or classified information within the category of “public information.” Also, “other official documents” in § 355.4(a)(4) should read “other published documents,” because official documents contain proprietary, classified, or otherwise privileged information and are not necessarily public information in the same sense.
Regarding initiations prior to importation of the merchandise, the regulation is based on the U.S. statute, which itself is consistent with the Agreement (Article VI) and the Agreement (Article VI) requires the importing country to commence an investigation to determine the existence, degree, and effect of any alleged subsidy on merchandise once it becomes apparent that a particular import will benefit from subsidies. Evidence of an irrevocable offer to sell or a sale is sufficient evidence to satisfy the requirement in Article 2 that there be "subsidized imports." It would undermine the purpose of the GATT and the Agreement to interpret narrowly and literally the phrase "subsidized imports" in Article 2(1). Neither the Agreement nor the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade requires such an interpretation. In certain situations, such as large capital equipment purchases, implementing the Agreement's authority to impose countervailing duties on "subsidized imports" requires that the investigation be initiated prior to the actual importation. See, e.g., Railcars from Canada, 48 FR 8599 (1983). We believe the drafters of the Agreement intended this result, because the countervailing duties under the Agreement's authority to a nullity in those situations. Of course, no countervailing (or antidumping) duties are levied until the merchandise is imported in the formal Customs sense.

Although all of the comments focused on the likely sale issue, we note that section 27 of the 1988 Act lists the factors to be considered in deciding whether a lease is equivalent to a sale. These factors are the terms of the lease, normal commercial practice within the industry, the circumstances of the specific transaction, the integration of the product into the operation of the lessee or importer, the likelihood of continuation or renewal of the lease over a significant period of time, and other relevant factors, including the possibility of avoidance of antidumping or countervailing duties. Sec. 355.3

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

Department's Position: The burden that would be created, and the potential disruption to an orderly proceeding that would result, given the enormous volume of records, does not permit the Department to provide this service. See also the Department's response to comments on § 355.34(b).

Sec. 355.3(a)

Comment: One party asks if the verifier's personal notes and verification documents that are neither important nor material to the factual assertions in the verification (except as secondary corroborations) should be included in the official record.

Another party objects to the narrow time window for filing factual information to be included in the official record. All information submitted and not returned by the Department should become part of the official record. Otherwise, petitioners are penalized for delays caused by respondents' late (but not "untimely") filings or the Department's late release of administrative protective order ("APO") material.

Department's Position: The verifier's notes are not part of the official record because such notes merely form the first draft of the final verification report. As for verification documents, those which clearly are not pertinent (whatever their "importance") will be excluded from the record.

We believe that our retention as part of the official record of untimely submitted documents would erode the principle of timely filings and in turn would jeopardize our ability to review submissions with care within the statutory deadlines for completion of an investigation or review. Therefore, we will not include in the official record (i.e., we will return to the submitter) any untimely filings. We do not believe that any party should be disadvantaged as a result of late actions by another party or by the Department. The Department, therefore, will strictly enforce its deadlines to avoid such results.

We note that we have clarified that documents returned to a submitter under §§ 355.31(b)(2) and 355.32(g) will not be included in the official record. All untimely or nonconforming submissions will be returned to the submitter with written notice stating the reasons for return of the documents. The written notice will detail the untimely or nonconforming nature of the submission, will be placed in the record of the proceeding.

Sec. 355.3(b)

Comment: One party contends that the public record of proceedings should contain material that can be disclosed to the public, rather than just what "the Secretary decides can be disclosed." Another party also questions the protectivity of the term "public" as it is used in the definitions of "public record" and "public information." It is not clear whether all "public information" would have to be included in the public record.

Department's Position: The Department believes there may be some ambiguity between §§ 355.3(b) and 355.4(a). We are altering the second sentence of § 355.3(b) to read as follows: "The record will consist of all material described in paragraph (a) of this section that the Secretary decides is public information within the meaning of § 355.4(a)." In the context of the definition of "public documents" in § 355.4(e), the Secretary decides may be disclosed to the general public, plus public versions of all determinations, notices, and transcripts.

Sec. 355.4

Comment: One party suggests that § 355.4 come immediately before § 355.32 for unity of subject matter. Also, § 355.33 is redundant in view of § 355.4.

Department's Position: Although the text of § 355.4 logically could be placed in Subpart C, we prefer to leave that text in Subpart A. As for the second point, we believe § 355.4 is definitional and § 355.33 is operational.

Sec. 355.4(a)

Comment: One party states that the Department's proposed standards for proprietary treatment are inadequate. Under the regulation, factual information in a form which cannot be associated with or used to identify a particular firm nonetheless may be proprietary for that firm. An example would be marketing strategies.

Another party suggests the inclusion of those portions of the Department's memoranda, memoranda of ex parte meetings, and transcripts cited at § 355.3(a) which do not contain proprietary, privileged, or classified information within the category of "public information." Also, "other official documents" in § 355.4(a)(4) should read "other published documents," because official documents contain proprietary, classified, or otherwise privileged information and are not necessarily public information.

Department's Position: The Department may deviate from the list of normally public information if the
proceedings, the special procedures described in § 355.22(l) are appropriate.

Sec. 355.12(a)

Note: See Department's position on § 355.13(a) for the explanation of a change to this paragraph.

Sec. 355.12(b)

Comment: Two parties state that the regulation should clarify that the administering authority will determine whether information is "reasonably available" in light of the circumstances of each petitioner. Another party urges the Department to continue to define the requirement "on behalf of an industry" because the phrase speaks for itself. We believe there are many methods of gathering the information that would not present a problem.

The requirement to include the names and addresses of other persons in the industry is consistent with the requirement that the petition be filed "on behalf of an industry. Obviously, the identity of persons that comprise the industry is an important fact relevant to petitioner's assertion. This is especially true with respect to known opponents of the petition. As explained in our response to comments on § 355.12(b), the Department will consider the size and nature of the busines and industry in deciding what information is reasonably available to a petitioner.

We see no need to define the phrase "on behalf of an industry because the phrase speaks for itself. The Department will continue to rely on the petitioner's representation of industry support. Neither the statute nor the legislative history requires the petitioner to establish affirmatively that it has the support of a particular percentage of the members of an industry. See the Department's response to comments on § 355.2(b).

Sec. 355.12(b)(2)

Comment: One party states that the regulation should specify on what basis (e.g., production or sales) the petitioner should determine the companies that account for two percent of the industry. Two parties state that the regulation should not require the names and addresses of members of the industry not supporting the petition because this information is not an element necessary to obtain relief and, therefore, not a statutory requirement. Several parties express concern that the regulation would unduly burden petitioners and might cause petitioners to violate U.S. antitrust laws in seeking proprietary information about their competitors' market shares. One party contends that the regulation should define the phrase "on behalf of an industry."

Department's Position: We see no need for this proposed modification. The Department routinely obtains from other persons in the industry information on other trade law proceedings. It is important to ensure that the Department's orduis are administrable, clear, enforceable, and adequate to protect the U.S. industry from unfair trade practices covered by the statute. In defining the class or kind of merchandise, the Department may, for example, rely on information not available to the petitioner and conclude that the purchaser's statement of class or kind is inadequate to prevent easy circumvention of the order.

We have modified this paragraph to delete the reference to the Tariff Schedules of the United States. The reference to "U.S. tariff classification" in the final rule would cover the Harmonized Tariff System when it is implemented in the United States.

Sec. 355.12(b)(6)

Comment: Several parties object to the requirement that the petition state the proportion of total exports to the United States from any country that has allegedly been subsidized. They contend that the information is irrelevant to the purpose of the petition and often difficult or impossible for the petitioner to obtain, and that the requirement is contrary to the Congressional intent to reduce the cost of filing a petition. They suggest that this requirement should be deleted.

Department's Position: The information on exports to the United

States is not irrelevant because the Department uses such information in the preparation of questionnaires and the review of questionnaire responses. Therefore, to the extent that this information is reasonably available to the petitioner, it should be reported in the petition. To the extent that it would be unduly burdensome, difficult, or impossible for a petitioner to obtain this information, the petition would be acceptable without it. As we stated in response to the comments on paragraph (j)(2) of this section, the petitioner may rely on publicly available information.

Sec. 355.12(b)(7)

Comment: One party urges the Department to be flexible in applying this provision to U.S. small business petitioners.

Department's Position: See the Department's response to comments on § 355.12(b).

Sec. 355.12(b)(8)

Comment: Two parties urge adoption of a 0.5 percent de minimis standard for measuring whether the upstream subsidy has a "significant effect" on the cost of producing the merchandise.

Another party suggests that the regulations be expanded in order to discourage "fishing expeditions" regarding suspected input subsidies. The party would have the Department require, under paragraph (b)(8)(i), information on the production process in which the input product is utilized and, under paragraph (b)(8)(ii), information showing that the price of the input product is lower than the price that the producer would otherwise pay to an arm's length seller.

Department's Position: The House Committee on Ways and Means explained that the purpose of the "significant effects" test "is to avoid needless investigation and verification of upstream subsidies which, although passed through to the final merchandise, are insignificant in affecting the competitiveness of that final product." H.R. Rep. No. 725, 98th Cong., 2d Sess. 34 (1984). We interpret this statement to mean that an effect on the cost of producing the final product is significant when the upstream subsidy significantly affects the competitiveness of that final product. Whether or not 0.5 percent is significant, therefore, may depend on factors such as the degree to which the final product competes on the basis of price. Because our experience with section 771A is still relatively limited, we are not prepared at this time to establish in the regulation a fixed threshold for significant effect and prefer instead to address this issue on a case-by-case basis. See, e.g., Certain Agricultural Tillage Tools from Brazil, 50 FR 34525, 34526 (1985).

Regarding the suggestion that the petition requirements be increased to include additional information, we believe that the requirements as stated in the proposed rule are sufficiently detailed to permit the Department to determine whether there is a reasonable basis to believe or suspect that the products under investigation benefitted from an upstream subsidy (and thereby avoid "fishing expeditions") without placing unnecessary burdens on petitioners to supply information that normally would be difficult to obtain. Of course, nothing would preclude the petitioner from submitting the kind of information suggested by the commenter, and to do so likely would strengthen any upstream subsidy allegation.

Sec. 355.12(b)(9)

Comment: Three parties suggest deletion of the requirement that the petition contain information on individual sales, customers, and prices because the requirement is not relevant to or necessary for countervailing duty investigations. One party also notes that the requirement is burdensome to small business petitioners.

Department's Position: We agree and have deleted the requirement that the petition contain information on individual sales, customers, and prices pertaining to the imported merchandise.

Sec. 355.12(b)(10)

Comment: One party urges the Department to be flexible in applying this provision to U.S. small business petitioners.

Department's Position: See the Department's response to comments on § 355.12(b).

Sec. 355.12(b)(12)

Comment: One party states that in order to conform to section 703(e)(1)(A) of the Act, this paragraph of the regulation must refer to "any alleged subsidy inconsistent with the Agreement" rather than the proposed language which states "an export subsidy inconsistent with the Agreement."

Department's Position: The proposed rule does not change the existing regulations in this respect. The legislative history of section 703(e) states that the provision is "consistent with article 5(9) of the agreement." S. Rep. No. 249, 98th Cong., 1st Sess. 50 (1979). The cited paragraph of the Agreement, which sets forth the elements necessary for a critical circumstances finding, requires inter alia that the product benefit from "export subsidies paid or bestowed inconsistently with the provisions of the General Agreement on Tariffs and Trade." Therefore, regardless of how broadly one might interpret the language of Article 5(9), it is clearly the petitioner must first find that the product has benefitted from an export subsidy. Paragraph (b)(12) is consistent with section 703(e)(1)(A) in this regard, but it makes the export subsidy requirement explicit for the petitioner whereas section 703(e)(1)(A) does not.

We note that if the petitioner alleges critical circumstances, and if the relatively short period begins prior to the date of the filing of the petition, the petition should provide information on imports during that period—otherwise, the information as to "relatively short period" would not be available at the time the petition is filed.

Sec. 355.12(d)

Comment: Two parties suggest that this section be revised not to exclude from consideration the entire petition. But only the particular information which the petitioner claims is proprietary and which was not submitted in conformity with the requirements of § 355.32.

Department's Position: Because the petitioner can easily resubmit the petition in proper form, we believe that it is in the petitioner's interest to do so. Otherwise, if the information which does not comply with § 355.32 is essential, the Department would decide under § 355.13 that the petition does not properly allege the basis on which a countervailing duty may be imposed. Nevertheless, we agree that the choice is the petitioner's and have revised paragraph (d) accordingly.

Sec. 355.12(g)

Comment: One party asks whether the service requirement should be extended to domestic and foreign interested parties and, if so, whether the Department or the petitioner should effect service of the petition.

Department's Position: This paragraph and paragraph (j)(2) of this section together satisfy the consultation requirement of Article 3(1) of the Agreement. No purpose is served by broadening this pre-initiation service requirement, because the Department, as provided in paragraph (j)(1), can accept almost no communications regarding the petition. United States v. Roses, Inc., 706 F.2d 1563, 1567 (Fed. Cir. 1983). In any event, the Department usually does not know prior to initiation
(1979). We agree that a certification requirement is an appropriate means of deterring the kind of problems described in this legislative history. However, we prefer to apply the certification requirement to all submissions of factual information, not just to those contained in petitions. Accordingly, we are adding to § 355.31 a new paragraph (i), which requires that all submissions of factual information (as defined in § 355.2(g)) be accompanied by an appropriate certification of a responsible official of the submitter and the submitter's legal counsel or other representative, if any. This certification requirement also is incorporated in section 1331 of the 1983 Act. We also are modifying § 355.12(a) of the proposed rule to cross-reference § 355.31(i).

Sec. 355.13(c)

Comment: One party believes that we should add a sentence at the end of paragraph (c) which states that the Secretary will not initiate an investigation without first determining that the petition is brought "on behalf of an industry." Department's Position: The Secretary has neither the authority nor the ability (in 20 days) to conduct a pre-initiation investigation of the petitioner's standing. See the Department's response to comments on § 355.12(f)(1). Based on the petitioner's statement that the petition filed on behalf of the industry, the new certification requirement of § 355.31, and other relevant factual information (§ 355.12(b)(2)), the Department decides prior to initiation whether the petition is filed "on behalf of an industry." If, during the investigation, there is clear indication that there are grounds to doubt a petitioner's standing, the Department will investigate" with regard to parties that oppose the petition, see, e.g., Certain Electrical Conductor Aluminum Redraw Rod from Venezuela, 53 FR 24755 (1988); Certain Fresh Atlantic Groundfish from Canada, 51 FR 10041 (1986), and the Department will re-examine the issue based on all available relevant information.

Sec. 355.14(a) and (b)

Comment: Several parties comment that the 30-day time limit on submission of requests for exclusion is too short. Some companies may not learn about the investigation in 30 days or, even if they do, may not have time to prepare the request described in this section. They suggest the time limit be extended to (1) the date when the questionnaire response is due, or (2) the date of the preliminary determination of verification. One party suggests that there should be no time limit at all. Several of these parties object to the 30-day time limit because of the requirement in paragraph (b) of this section that the person requesting exclusion must first request that person's certification and the certification of the government of the affected country. They state that it would be impossible to obtain the government certification within 30 days, especially when there are a large number of foreign government agencies and programs involved. It would be difficult for the person submitting the request to provide that person's certification because of the amount of work involved in researching and preparing the certification. Two parties urge the Department to drop the requirement for certification by the government of the affected country. One of these parties notes that the firm's certification should be sufficient, because proposed § 355.20(e) applies a penalty for false certification by the firm.

One party believes that the regulation should specify that any foreign producer or exporter may seek exclusion by submitting a questionnaire response in a timely manner. The party believes that the certifications in paragraph (b) are unnecessary because the verification process in effect is the equivalent of certification. Another party adds that any company should be permitted, if necessary, to request that it be served with a questionnaire. If the Department requires a certified undertaking that the person will not receive subsidies in the future, that person should permit submission of the certification shortly before the final determination.

One party believes that the 30-day time frame for filing requests should be adequate but adds that, if the Department extends the deadline in its final rule, the deadline should be no later than the date the questionnaire response is due and the request should be accompanied by sufficient additional information to make the Department's verification "plausible for the exclusion requests." The additional information would consist of copies of all annual reports for the relevant fiscal year, written statements from the respondent company and its accounting firm regarding non-receipt of subsidies, and a copy from the foreign government of a list of all benefits and benefit recipients during all relevant periods.

Department's Position: The Department's response to comments on § 355.14(c). Alternatively, the foreign producer or exporter may request a company-specific revocation under § 355.25(a)(3) at the earliest opportunity.

The Department cannot extend the deadline for filing requests for exclusion beyond the 30-day period set forth in the proposed rule, because it must decide by that date or shortly thereafter which companies it will investigate and to which it will send questionnaires and begin preparing for verification of responses. If the certifications were not submitted until the deadline for submitting questionnaire responses, the Department would not have sufficient time to issue questionnaires, analyze responses, and prepare for verification.

The certifications by the government of the affected country and the party requesting exclusion are required in order to ensure that the requests are carefully considered by all parties that have relevant information. These certification requirements are analogous to those required under § 355.25(b)(3) for company-specific revocations. The certifications are required in order to justify the Department's decision to conduct an investigation specifically of the company submitting the request for exclusion, an investigation it might not otherwise conduct. Neither the questionnaire requests nor verification serve the same purpose as certifications. See Department's response to comments on § 355.14(c).

Sec. 355.14(a)

Comment: One party states that the request for exclusion should not be irrevocable because a firm that submits the request in good faith may later discover that it received a benefit a the Department considers a countervailable subsidy. Another party comments that requests for exclusion should not be limited to producers or exporters which do not benefit from countervailable subsidies during the most recent fiscal year, because the Department should make every effort to exclude all producers and exporters which do not benefit from countervailable subsidies. Another party argues that a request for exclusion should not have to cover a program that the Department has previously found to be noncountervailable.
the identity of all interested parties. Once the Department decides to initiate an investigation, the broad service requirements in § 355.31(g) apply to documents filed in the proceeding. Upon receipt of the petition, the Department places a public version of it in the public record. See § 355.3(b).

Sec. 355.12(b)

Comment: One party contends that the phrase "derogation of an international undertaking on official export credits" is not clear and should be explained.

Department's Position: This paragraph, which implements section 702(b)(3) of the Act, concerns petitions which allege that a foreign government is providing export credit financing on terms more favorable than those allowed under international agreements.

Sec. 355.12(j)(1)

Comment: Several parties state that this paragraph on pre-initiation communications with the Department is more restrictive than the decision of the Court of Appeals in United States v. Roses, Inc., 706 F.2d 1563 (Fed. Cir. 1983). Four parties note that Roses dealt with communications from potential respondents (including foreign producers, exporters, governments, and U.S. importers) and should not be interpreted as a restriction on communications with petitioners. One of those parties suggests that the Department modify the regulation to prohibit communications with U.S. producers that are related to potential respondents. Two other parties state that the Department can take into account procedural defects in the petition (such as the standing of the petitioner), provided that the communications are on the record and with adequate notice to petitioners. One of these parties also believes the Department should permit interested parties to bring to the Department's attention matters in the public domain.

Department's Position: Paragraph (j) is consistent with the Roses decision. Paragraph (j)(1) limits the restriction on communication to interested parties defined in paragraph (i)(1) or (i)(2) of section 355.2, which means that the Department will accept communications from domestic interested parties defined in paragraphs (j)(3) through (j)(6) of section 355.2. If a U.S. producer of the like product (§ 355.2(i)(3)) or any other domestic party communicates with the Department as an agent of a potential respondent, the prohibition in paragraph (j)(1) would apply to that communication. It is neither necessary nor appropriate to prohibit all communication from U.S. producers related to potential respondents because, to the extent relevant to the communication, the U.S. related party may share the interests and concerns of non-related U.S. producers of the like product. Regarding procedural issues, the Court in Roses held that under no circumstances was the Department to engage in an advocacy proceeding based on information from potential respondents at the pre-initiation stage of the proceeding. 706 F.2d at 1567. We believe that this holding precludes the Department from making fine distinctions between law and fact, procedure and substance, and whether information is in the public domain, especially because the Department would have to accept and review correspondence in order to make such distinctions. Such a review of correspondence would lead to needless and time-consuming disputes as to whether the Department had abided by the ruling in Roses in a particular case.

Sec. 355.12(j)(2)

Comment: One party states that we should clarify what a foreign government is entitled to consultation under this paragraph. Another party states that because the Court in Roses held that U.S. law does not permit pre-initiation consultations with potential respondents, the Department has no authority to conduct such consultations even if the respondent is a foreign government. Section 3 of the Act provides that no provision of a trade agreement which is in conflict with a U.S. statute shall be given effect. If the Department does make an exception for consultations required by Article 3(1) of the Agreement, this and another party state that the Department should not consider factual or legal matters discussed in such consultations in determining the sufficiency of the petition.

Department's Position: Paragraph (j)(2) is sufficiently clear: consultations will be conducted, if requested, only when required by Article 3(1) of the Agreement or other international agreement that contains a substantially equivalent consultation provision. The provision is narrowly drafted to comply with the requirements of Article 3(1). Because Roses involved a dumping duty petition and there is no such consultation provision in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, the Court neither considered whether Article 3(1) might create an exception to its "no communication" rule nor held that it does not create such an exception. The Act does not by its terms preclude these pre-initiation consultations with a foreign government. International agreements and domestic statutes should be, to the extent possible, construed to give effect to both. See Lake Ontario Land Development and Beach Protection Ass'n v. F.P.C., 212 F.2d 227 (DC Cir.), cert. denied, 347 U.S. 1015 (1953).

Sec. 355.13(a)

Comment: Two parties recommend that, prior to initiation of an investigation, the Department require each petitioner and the lawyer, if any, who prepared the petition to certify that (1) the petition contains information reasonably available to the petitioner(s) supporting the allegations in the petition; (2) the petition does not omit important facts which are reasonably available to the petitioner(s); and (3) all information in the petition is, to the best of each certifier's knowledge, true and correct. The purpose of the certification is to prevent the filing of baseless or knowingly false allegations for the purpose of chilling legitimate competition.

Department's Position: The countervailing duty law requires that the allegations in a petition be supported by information reasonably available to the petitioner and that such information accompany the petition. As explained in the legislative history of section 702(b)(1) of the Act, the Department is expected to reject petitions "which are clearly frivolous, not reasonably supported by the facts alleged or which omit important facts which are reasonably available to the petitioner." H. Rep. No. 317, 96th Cong., 1st Sess. 51.
Department's Position: As we explained in the preamble of the proposed rule, the Department structures its investigations to take into account requests for exclusion. The reason for requiring the company and the government of the affected country to certify the accuracy of the information in the request is to permit the Department to rely on the statements made in the request. To permit withdrawal of requests for exclusion would destroy the basis for the Department's reliance because it would, in effect, weaken or undermine the company's and the affected government's incentive to research thoroughly the facts on which the certifications are based. The Department must be able to rely on the accuracy of the certifications in order to ensure that it uses its limited administrative resources in the most efficient and effective manner. Moreover, if the requests were revocable, the Department would have the additional burden of attempting to determine whether the request was submitted in good faith. Therefore, we are not adopting the comment.

The Department can grant an exclusion request only on the basis of facts pertaining to the period of investigation. The Department cannot determine whether a company receives countervailable subsidies unless the company has exported to the United States during the period of investigation. To provide special periods of investigation for companies which do not export to the United States during that period would complicate unnecessarily the Department's investigation. The period of investigation is the most recent period for which information is available. Exports of foreign companies in earlier periods would not be subject to countervailing duties. Any company that begins to export or resumes exporting during a period following the period covered by the certification may be entitled to revocation based on the procedures in § 355.25.

We agree that exclusion requests need not provide certification as to programs that the Department has found not to be subject to countervailing duties, and have modified the rule accordingly. The fact that the Department may decide to take another look at the program is not, in and of itself, sufficient reason to ignore the prior finding for the purpose of exclusion requests.

Sec. 355.14(b)

Comment: Several parties state that the certification requirements are not broad enough for one or more of the following reasons: (1) foreign producers would try to circumvent orders by deciding for the Department whether they received "any net subsidy;" (2) "any net subsidy" does not clearly cover upstream subsidies; (3) only the Department can determine whether a "net" subsidy has been received; (4) the word "program" should be changed to "allegation" or "alleged benefit" to avoid the possibility that requesters may not include benefits provided on a one-time, or recurring (but non-program) basis; (5) in addition to subsidy practices listed in the initiation notice, the certification should cover any subsidy practice subsequently included in the investigation, and (6) the one-year limitation should be dropped and the producer should be required to certify that it never applied for or received a subsidy that, under the Department's interpretation of the measurement of benefits, would be found to provide a net subsidy. One party states that it is unreasonable and unnecessary to require the certifications of non-producers.

Department's Position: In preparing the certifications required by this paragraph, the company and the government will have to consider the Department's practice (as set forth in published determinations and other documents) regarding the identification and measurement of subsidies. Because the Department, not the party requesting exclusion, will determine whether exclusion is practicable, the requester has nothing to gain by interpreting the operative language of paragraph (b) in a manner inconsistent with the Department's practice at the time the certification is made. The phrase "any net subsidy on the merchandise" clearly covers upstream subsidies, and the word "program" includes any countervailable benefit provided to a company whether on a one-time or recurring basis. The certifying party must consider whether any portion of a net subsidy, regardless of the time of bestowal, would be attributed to the investigation period under the Department's method of quantification and allocation of benefits.

Certifications need not cover subsidy practices not listed in the Department's notice of initiation. Given the short time limits set forth in paragraph (a), any greater burden on the requesting party would be unreasonable. However, if the Department determines as a result of its investigation that the party requesting exclusion has benefitted from a net subsidy not covered by the certification, the Department will deny the request for exclusion. See § 355.21(e).

Finally, the requirement that a non-producer requesting exclusion also submit the certification described in paragraph (b)(1) is reasonable because the non-producer may benefit from net subsidies (such as export credits) other than or in addition to those provided to the producer. Moreover, the non-producer must certify that it "will not apply for or receive any subsidy on the merchandise in the future," as provided in paragraph (b)(1).

Sec. 355.14(c)

Comment: Two parties state that the Department should grant requests for exclusion only when it conducts a thorough investigation and verifies that the requesting company has satisfied the requirements set forth in this section. One of these parties urges deletion of the phrase "to the extent practicable." or alternatively, the addition of a statement that the certification of a request is impracticable, then the request will be denied. One party is concerned that § 355.14 does not permit petitioners to comment on requests for exclusion. Two other parties suggest that the Department explain in the regulation that the phrase "to the extent practicable" means that the Department must be able to conduct a thorough investigation of the request.

Several parties argue that the Department has no authority under U.S. law or the Agreement to impose countervailing duties against merchandise that benefited from a subsidy, and that it would be unfair to force a producer or exporter that received no countervailable benefit to defend itself during an entire investigation. One of these parties concludes that due process and the GATT require the Department to exclude innocent parties at the onset of an investigation. One party notes that if the Department in its final determination concludes that a producer received no net subsidy or a de minimis net subsidy, the Department must automatically exclude that producer from the countervailing duty order.

One party states that the Department must investigate all requests for exclusion and exclude all applicants eligible for exclusion. Because this requirement is clearly set forth in § 355.38 of the existing regulations, this party favors retention of the existing regulation in lieu of the proposed rule. Another party comments that if it truly is an administrative impossibility for the Department to investigate every firm that has requested exclusion, the
Department should investigate a sample of such firms and exclude all firms requesting exclusion if all sampled firms satisfy the Department's requirements.

Department's Position: When the Department receives requests for exclusion which comply with the requirements of this section, the Department will investigate the requests in accordance with the investigatory procedures described in other sections of this part. For example, the Department will ask each party requesting exclusion to answer a questionnaire, submit to verification, and abide by the procedures on information and argument in Subpart C of this part.

As explained in the preamble to the proposed rule, the phrase "to the extent practicable" would permit the Department to refuse to investigate one or more of an application when it concludes that it could not do so within the statutory time limits on investigations. Such refusal might occur, for example, in a case in which an extraordinarily large number of requests for exclusion are submitted. If the Department refuses to investigate a request for exclusion, the requester may be excluded from the countervailing duty order by requesting a revocation under §355.23(b)(3). These regulations do not address the question whether the Department has authority to exclude all firms requesting exclusion based on the results of an investigation of a sample of those firms. Neither the GATT nor U.S. law requires the Department to investigate every request for exclusion of or every company that produces or exports the class or kind of merchandise under investigation.

In compliance with the Agreement, the Department levies a countervailing duty order against merchandise which benefited from a subsidy. The term "levy" is defined in the Agreement to mean "the definitive or final legal action by which the Department levies a countervailing duty order by requesting a revocation under §355.23(b)(3). These regulations do not address the question whether the Department has authority to exclude all firms requesting exclusion based on the results of an investigation of a sample of those firms. Neither the GATT nor U.S. law requires the Department to investigate every request for exclusion of or every company that produces or exports the class or kind of merchandise under investigation.

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If the Department includes a producer or exporter in its investigation and determines that the producer or exporter received no countervailable benefits during the period of investigation, the Department would automatically exclude that producer or exporter from the countervailing duty order, even if the producer or exporter did not request exclusion under the procedures described in this section. The purpose of this section is merely to provide an opportunity for producers and exporters which the Department might not otherwise include in its investigation to request that the Department specifically include and investigate them. If the Department investigates a company on other grounds, no purpose would be served by an exclusion request.

Sec. 355.15

Comment: One party suggests adding the following provisions to this section: (1) when respondents cooperate in the investigation, the best information available is the respondent's reply to the questionnaire when verification occurs after the preliminary determination; (2) when petitioner requests a postponement of the preliminary determination, the Department shall conduct verification prior to the preliminary determination; and (3) the Department shall issue and publish a corrected preliminary determination as soon as it discovers clerical error.

Department's Position: (1) Section 776(b) and (c) of the Act and §355.57 of this regulation specify the limited conditions in which the Department may use "best information available" in lieu of information submitted by respondents. As explained in the preamble to the proposed rule, paragraph [a] of this section refers to "available information" in order to indicate that the Department may base its preliminary determination on any information available to it at the time. "Available information" includes, but is not necessarily limited to, the respondent's submissions. For example, even prior to verification, the Department may know that respondent's submissions are demonstrably incorrect. In that event, the Department may use apparently reliable information from other sources.

(2) Whenever there are adequate time and resources for verification prior to a preliminary determination, the Department will conduct the verification prior to the date of the preliminary determination in order to make its preliminary determination more accurate. In practice, the Department usually conducts verification after the preliminary determination, even when the petitioner requests an extension of the date for the preliminary determination. However, if the petitioner requests an extension for the purpose of permitting the Department to obtain additional information from the respondent, Preparation of the supplemental questionnaires and submission and review of responses consumes 25 to 45 days of the extension period. Verification is conducted only after the Department has provided each respondent with an adequate opportunity to submit the information requested by the Department. The on-site verification, including associated preparation and report-writing, normally requires 30 to 40 days. Because the period of the extension under paragraph (c) of this section is not more than 65 days, there is in most cases insufficient time for verification prior to the date of the preliminary determination.

(3) Facts available to the Department at an early stage of the investigation are limited in comparison with those available later in the investigation. Preliminary determinations are simply interim decisions intended to focus issues and provide the basis for comment by the parties to the proceeding. They are not subject to judicial review. One important effect of a final determination is to correct inaccuracies in the preliminary determination. Therefore, an additional procedure for correcting errors in a preliminary determination would be unwarranted waste of the Department's scarce resources. We have established a practice of correction of clerical errors in final determinations and final results, which is also provided for in section 1335 of the 1988 Act. See 53 FR 41617 (October 24, 1988); 53 FR 5013 (February 26, 1988).

Sec. 355.15(a)

Comment: One party states that in order to conform to section 703(b) of the Act, paragraph [a][1] should state that the Department must have a reasonable basis to believe "or suspect" that a subsidy is being provided. Another party suggests that paragraph [a][2][i] be modified to indicate that determinations will include administrative and judicial precedents on which legal conclusions are founded. Another party notes, with regard to paragraph [a][3][ii], that the statute requires implementation of suspension of liquidation and other
Department should investigate a sample of such firms and exclude all firms requesting exclusion if all sampled firms satisfy the Department's requirements.

**Department's Position:** When the Department receives requests for exclusion which comply with the requirements of this section, the Department will investigate the requests in accordance with the investigatory procedures described in other sections of this part. For example, the Department will ask each party requesting exclusion to answer a questionnaire, submit to verification, and abide by the procedures on information and argument in Subpart C of this part.

As explained in the preamble to the proposed rule, the phrase "to the extent practicable" would permit the Department to refuse to investigate one or more of the requests when it concludes that it could not do so within the statutory time limits on investigations. Such refusal might occur, for example, in a case in which an extraordinarily large number of requests for exclusion are submitted. If the Department refuses to investigate a request for exclusion, the request may be excluded from the countervailing duty order by requesting a revocation under § 355.23(b)(3). These regulations do not address the question whether the Department has authority to exclude all firms requesting exclusion based on the results of an investigation of a sample of those firms. Neither the CATT nor U.S. law requires the Department to investigate every request for exclusion or every company that produces or exports the class or kind of merchandise under investigation.

In compliance with the Agreement, the Department levies a countervailing duty only against merchandise which benefited from a subsidy. The term "levy" is defined in the Agreement to mean "the definitive or final legal action" or "the definitive or final legal action". It only requires that the Department levies a countervailing duty order, even if the producer or exporter did not request exclusion under the procedures described in this section. The purpose of this section is merely to provide an opportunity for producers and exporters which the Department might not otherwise include in its investigation to request that the Department specifically include and investigate them. If the Department investigates a company on other grounds, no purpose would be served by an exclusion request.

**Sec. 355.15**

Comment: One party suggests adding the following provisions to this section: (1) when respondents cooperate in the investigation, the best information available is the respondent's reply to the questionnaire when verification occurs after the preliminary determination; (2) when petitioner requests a postponement of the preliminary determination, the Department shall conduct verification prior to the preliminary determination; and (3) the Department shall issue and publish a corrected preliminary determination as soon as it discovers clerical error.

**Department's Position:** (1) Section 776 (b) and (c) of the Act and § 355.57 of this regulation specify the limited conditions in which the Department may use "best information available" in lieu of information submitted by respondents. As explained in the preamble to the proposed rule, paragraph (a) of this section refers to "available information" in order to indicate that the Department may base its preliminary determination on any information available to it at the time. "Available information" includes, but is not necessarily limited to, the respondent's submissions. For example, even prior to verification, the Department may know that respondent's submission is demonstrably incorrect. In that event, the Department may use apparently reliable information from other sources.

(2) Whenever there are adequate time and resources for verification prior to a preliminary determination, the Department will conduct the verification prior to the date of the preliminary determination in order to make its preliminary determination more accurate. In practice, the Department usually conducts verification after the preliminary determination, even when the petitioner requests an extension of the date for the preliminary determination. The Department suggests that the petitioner requests an extension for the purpose of permitting the Department to obtain additional information from the respondent. Preparation of the supplemental questionnaires and submission and review of responses consume 25 to 45 days of the extension period. Verification is conducted only after the Department has provided each respondent with an adequate opportunity to submit the information requested by the Department. The onsite verification, including associated preparation and report-writing, normally requires 30 to 40 days. Because the period of the extension under paragraph (c) of this section is not more than 65 days, there is in most cases insufficient time for verification prior to the date of the preliminary determination.

(3) Facts available to the Department at an early stage of the investigation are limited in comparison with those available later in the investigation. Preliminary determinations are simply interim decisions intended to focus issues and provide the basis for comment by the parties to the proceeding. They are not subject to judicial review. One important effect of a final determination is to correct inaccuracies in the preliminary determination. Therefore, an additional procedure for correcting errors in a preliminary determination would be unwarranted waste of the Department's scarce resources. We have established a practice of correction of clerical errors in final determinations and final results, which is also provided for in section 1335 of the 1988 Act. See 53 FR 41617 (October 24, 1988); 53 FR 5013 (February 26, 1988).

**Sec. 355.15(a)**

Comment: One party states that in order to conform to section 703(b) of the Act, paragraph (a)(1) should state that the Department must have a reasonable basis to believe "or suspect" that a subsidy is being provided. Another party suggests that paragraph (a)(2) be modified to indicate that determinations will include administrative and judicial precedents on which legal conclusions are founded. Another party notes, with regard to paragraph (a)(3)(ii), that the statute requires implementation of suspension of liquidation and other
provisional measures on or after the date of publication, not the date of signing, of the preliminary determination. Finally, one party states that paragraph (a)(4) should incorporate the elements listed in paragraphs (a)(2) and (a)(3), as well as an invitation for argument consistent with § 355.38.

*Department's Position: Because the word "suspect" appears in section 703(b) of the Act, we have added this word to paragraph (a) of the regulation. The suggestion that the Secretary's determination recite legal precedent would impose a burden not required by the statute. To the extent necessary to explain the determination, the Department does discuss legal precedents in its preliminary determinations. In view of the fact that the preliminary determination is not subject to judicial review and is subject to revision in the final determination, any additional discussion of administrative and judicial precedents is unnecessary.*

Paragraph (a)(3)(ii) does not specifically address the question of when provisional measures take effect. However, the effective date is the date of publication of the notice in the Federal Register, as clearly provided in section 703(d)(1) of the Act. Finally, the notice that is published in the Federal Register, as a matter of practice, does incorporate the elements of the preliminary determinations described in paragraphs (a)(2) and (a)(3). This issue was addressed in "Notice of Withdrawal of Proposed Change in Format of Federal Register Notices" at 52 FR 1218 (January 12, 1987).

Sec. 355.15 (b) and (c)

*Comment: One party asks whether the terms used in paragraph (b)(2) should be defined or qualified and whether a postponement under paragraph (c) could extend the time for amending the petition under § 355.31(c)(1). Another party suggests that paragraph (b) should provide, as an additional reason for postponement, the consideration of requests for exclusion or the calculation of individual rates for one or more producers or exporters.*

*Department's Position: The Department's precedents, which address dozens of varied situations difficult to describe in a single definition, provide adequate guidance regarding the meaning of the terms used in paragraph (b)(2). The Department's authority to extend the time limit for issuing a preliminary determination is "narrowly circumscribed" by the statutory criteria in paragraph (b)(2). See 53 Cong., 1st Sess. 50 (1973), Section 703(c)(3)(B) of the Act does not permit consideration of additional criteria for allowing an extension of time.*

Postponements under paragraphs (b) and (c) would not necessarily affect the time limits in § 355.31(c)(1), but the appropriate official of the Department may take into account the fact that the preliminary determination has been postponed in considering whether to grant, under § 355.31(c)(3), a request for extension of the time limits set forth in that section for submission of new allegations.

Sec. 355.15(d)

*Comment: One party suggests that we modify this paragraph to include a time limit for submission of upstream subsidy allegations. The party suggests that a reasonable deadline would be five calendar days before the date of the preliminary determination, in order to provide petitioners the maximum opportunity to respond to the issue. See also comment on § 355.20(b).*  

*Department's Position: The Department agrees that it is appropriate to include in this paragraph a time limit for submission of upstream subsidy allegations. The Department must have sufficient time to clarify (if necessary, by obtaining additional information) and evaluate a request after it is submitted. Based on past experience, ten days is a reasonable amount of time for this purpose. Therefore, we have added a 10-day time limit in a new paragraph (d)(1). The text of paragraph (d) that appeared in the proposed rule is now paragraph (d)(2) of this final rule.*

Sec. 355.15(e)-(h)

*Comment: One party argues that paragraph (e) should permit publication of the notice of postponement less than 20 days before the scheduled date for the preliminary determination, provided the notice is sent to the Federal Register not less than 20 days before the scheduled date. Regarding paragraph (f), that same party asks: (1) whether verification can be waived if the Department does not receive a response to the questionnaire within 50 days of initiation; (2) should there be a time limit for issuing a questionnaire; (3) does this provision mean the Department will make a preliminary and final determination based on the same information; and (4) can the Department receive data after waiver of verification? Regarding paragraph (g), the party questions whether the Department should provide notice that the Commission may not, without the Department's permission, disclose proprietary information received from the Department. Regarding paragraph (h), the party asks the Department to explain the nature of the information which the Department will disclose. In addition, another party suggests that disclosure be described as a "complete," rather than "further," explanation of the determination.*

*Department's Position: Regarding paragraph (e), the time limit applies only to the requirement that the Secretary notify all parties to the proceeding of the decision to postpone the preliminary determination. It does not apply to the publication of notice in the Federal Register. We have revised paragraph (e) to shorten the time for notice of postponement for upstream subsidy investigations under paragraph (d) from 20 days before the scheduled date for the preliminary determination to not later than that scheduled date. The 20-day time limit for notice of postponement in extraordinarily complicated cases (paragraph (b)) and at the request of the petitioner (paragraph (c)) are mandated by section 703(c)(2) of the Act. There is no statutory time limit for notice of postponement for investigation of upstream subsidies. The Department believes it is important to afford as much time as possible for submission of an upstream subsidy allegation prior to the preliminary determination. Accordingly, we have separated paragraph (e) into paragraph (e)(1), which contains most of the proposed text of paragraph (e), and paragraph (e)(2), which provides for notice of postponement for investigation of upstream subsidies.*

Regarding paragraph (f), the language of the regulation closely tracks the language of section 703(b)(9) of the Act. This provision has not been invoked or applied in practice. Absent practical experience in the administration of this provision, the Department is not in a position to answer most of the questions posed. We do not, however, believe it is necessary to include in paragraph (f) a time limit for issuing a questionnaire because questionnaires are, as a matter of practice, issued as soon as possible after initiation of an investigation.

*Regarding paragraph (g), the limitation on the Commission's authority to disclose business proprietary information that is provided to it by the Department is set forth in the last sentence of § 355.32(f). The Commission may disclose such information only with the Department's permission. See the preamble to the proposed rule concerning § 355.15(g).*  

*Regarding paragraph (h), we have clarified that the purpose of disclosure is only to provide an explanation of the*
calculation methodology used in the determination.

Sec. 355.16(a)

Comment: One party recommends that paragraph (a)(1) be amended to read "[a]ny alleged export subsidy which is inconsistent with the Agreement" to clarify that only export subsidies are inconsistent with the Agreement. Conversely, two parties suggest deleting the word "export" in § 355.12(b)(12)(ii) because they believe that even a non-export (i.e., domestic) subsidy may be inconsistent with the Agreement and, therefore, sufficient to trigger a critical circumstances investigation.

One of these parties contends that there is no statutory authority for the Department to self-initiate an investigation of critical circumstances, and that the Department should not substitute its perception of what is in the petitioner's interest for that of the petitioner. Another party states that the 21-day time limit does not afford the Department sufficient time to conduct an adequate investigation of critical circumstances.

Department's Position: We agree with the comment about an alleged export subsidy and have revised the regulation to be consistent with the existing regulation. The use of the terms "export subsidy" and "subsidy inconsistent with the Agreement" is discussed above in the Department's position on § 355.12(b)(12)(ii). We have also revised this paragraph to codify the Department's practice of making a determination of the consistency of export subsidies with the Agreement only when such subsidies are used by producers or exporters of the merchandise.

Although section 702(c) does not expressly authorize the Department to find critical circumstances in self-initiated investigations, the Department in such cases is considered the petitioner and, as such, has authority to allege and investigate critical circumstances. Under a similar interpretation of the statute, the Department has determined that in a self-initiated investigation the administering authority is the "petitioner" and may, in appropriate circumstances, withdraw its petition and terminate the investigation. See e.g., "Certain Steel Products from Belgium, Brazil, France, Romania, South Africa, and Spain, 47 FR 9754 (1982). An interpretation of the law which would exclude critical circumstances from the purview of self-initiated investigations would be inconsistent with the Congressional desire for vigorous enforcement of the countervailing duty law. See e.g., H.R. Rep. No. 317, 96th Cong., 1st Sess. 51 (1979).

Because the principal research involved is the analyzing of import data, we believe that 21 days is an adequate period of time for the Department to investigate and to make a finding on critical circumstances.

Sec. 355.16(b)

Comment: Three parties state that nothing in the Subsidies Code or the statute precludes a preliminary finding of critical circumstances prior to the preliminary determination. They argue that to allow such a preliminary finding prior to the date of the preliminary determination, even if suspension of liquidation is not imposed until the date of the preliminary determination, would help deter import surges during the investigation.

Department's Position: We have revised paragraphs (b)(2)(i), (c), and (g) to permit the Department to issue a preliminary critical circumstances finding before the date of the preliminary determination under § 355.15 in appropriate cases. (We note that this requirement also is provided in section 1324 of the 1986 Act.) If a preliminary critical circumstances finding is made before the date of the preliminary determination, suspension of liquidation will take effect only at the time of, and in the event of, an affirmative preliminary determination. In order to make an affirmative preliminary finding of critical circumstances, the Department must find: (1) that the merchandise has benefited from an export subsidy; and (2) as explained in the Department's position on comments on paragraphs (f) and (g), that imports have increased significantly during a relatively short period. A "relatively short period" is defined in paragraph (g) as normally the three-month period beginning either on the date the proceeding begins, or, when appropriate, a period of no less than three months from the date prior to the initiation of the proceeding on which importers and exporters had reason to believe that a proceeding was likely.

In order to make an affirmative preliminary finding of critical circumstances before the preliminary determination under § 355.15, therefore, the Department would have to have sufficient information about the subsidies on the merchandise and the shipments of the merchandise to have a "reasonable basis to believe or suspect" (as provided in section 705(a)(1) of the Act) that the statutory criteria are met. The Department might, for instance, obtain sufficient information about subsidies if it could establish that the merchandise benefitted from a subsidy which the Department previously had found to be countervailable. Absent such information and a prior relevant determination, the Department could not make its finding prior to the date of its preliminary determination under § 355.15. The critical circumstances finding is not intended to suspend the preliminary determination under § 355.15.

The Department also cannot make a preliminary finding of critical circumstances unless it can obtain information on shipments of the merchandise during the "relatively short period" as defined in paragraph (g). This means that the Department could make a preliminary finding of critical circumstances prior to its preliminary determination in proceedings in which the date of the preliminary determination is postponed under § 355.15(b), (c), or (d), to a date beyond the 60th day from the date the petition is filed, in proceedings in which the "relatively short period" begins on a date before the petition is filed, or in unusual situations in which the "relatively short period" is less than three months. Section 1324 of the 1986 Act authorizes the Department to request that the Customs Service compile the relevant statistics on an expedited basis.

Sec. 355.16(c)

Comment: Three parties suggest that this paragraph be redrafted to indicate more clearly that the Department will order suspension of liquidation no earlier than the date of its preliminary determination. One of the parties suggests changing the reference to "all entries" in the first sentence of the paragraph to "all unliquidated entries," because retroactive suspension applies only to unliquidated entries.

Department's Position: We agree and have modified paragraph (c) to provide clearly for suspension of liquidation only at the time of, or after, an affirmative preliminary determination under § 355.15. See also Department's response to comments on § 355.16(b).

Suspension of liquidation can apply only to unliquidated entries. In these regulations, we have not used the longer phrase and see no reason to do so.

We note that we have revised paragraph (c) to clarify that suspension of liquidation would apply only to entries covered by the affirmative critical circumstances finding. In addition, we have made technical changes to paragraph (c) to clarify the language of this paragraph.
length of the "relatively short period" when the Department finds that exporters or importers "had reason to believe" that a "proceeding was likely" is not consistent with the Congressional purpose to deter import surges during the period between initiation of an investigation and a preliminary determination. One of these parties also believes the provision is anticompetitive. Several parties believe that the provision is subjective and unadministrable.

Most of these parties favor deletion of this provision, but one party advocates revising paragraph (g) to include a list of objective criteria for the Department to refer to in deciding whether the importers or exporters had "reason to believe" that a "proceeding was likely." On the other hand, two parties contend that the statute permits the Department normally to consider import surges prior to the filing of the petition. One party states that the Department should discard the proposed rule and in its place define the relevant period as a period extending "no more than three months prior to the filing of the petition." Another party seems to advocate no limitation on the Department's ability to consider import surges prior to the filing of the petition.

**Department's Position:** Neither the statute nor the legislative history defines the phrase "relatively short period." The definition in paragraph (g) is consistent with the Congressional purpose of deterring import surges prior to suspension of liquidation that can be attributed to an effort to circumvent the effect of the law. The House Report states that the purpose is to "deter exporters and importers subject to investigation from circumventing the intent of the law by increasing their exports to the United States during the period between initiation of an investigation and a preliminary determination by the Authority." H.R. Rep. No. 317, 96th Cong., 1st Sess. 63 (1979). We believe that Congress intended that there be a benchmark period unaffected by the possibility of the imposition of countervailing duties. If the exporters had knowledge that an investigation would be initiated, that period must be prior to initiation. In order to accomplish this purpose by issuing an affirmative critical circumstances finding at the earliest possible moment during the investigation, the Department must have the discretion to compare the level of imports to a benchmark period with the level of imports during the benchmark period.

In applying this provision, the Department will carefully evaluate all available information in order to eliminate the possibility of chilling legitimate trade and competition from abroad. For example, the Department would examine historical and seasonal trends to determine whether or not the increase in imports during the "relatively short period" is normal and appropriate.

This paragraph has been revised to permit the Department, when appropriate, to issue a critical circumstances finding prior to the date of the Department's preliminary determination under § 355.15. See Department's response to comments on § 355.15(b).

Sec. 355.17(a)

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

Another party contends that we should delete the last sentence of paragraph (a)(1), because the statute only requires the public interest to be considered when termination on withdrawal of petition is based on a quantitative restriction agreement, as provided in paragraph (b).

**Department's Position:** The certification requirement proposed by the first commentator is unnecessary. The obligation to consider the public interest gives the Department sufficient authority to obtain from interested parties all relevant information concerning withdrawal of petitions. The requirement that the Department consider whether a termination agreement serves the public interest derives from the 1979 legislative history of section 704(a) of the Act, which states, "The committee intends that an investigation be terminated under section 704(a) only if the Authority or the ITC determines that termination will serve the public interest." B. Rep. No. 245, 96th Cong., 1st Sess. 34 (1979). This requirement was articulated in § 355.30(a) of the existing regulations and is carried over into this paragraph. If withdrawal is in fact based on a quantitative restraint agreement, the Department applies the provisions in paragraph (b) of § 355.17. Those provisions implement the 1984 amendment to section 704(a) of the Act, which provides more detailed public interest criteria for terminations based on quantitative restraint agreements.

Sec. 355.17(b)

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

**Department's Position:** Paragraph (b)(2) restates the statutory requirement set forth in section 704(a)(2)(C) of the Act. As a matter of practice, the Department consults with other agencies, when appropriate, on issues affecting the public interest determination under this paragraph. See also § 355.36(a).

Sec. 355.18(a)(1)

**Comment:** One party would change this paragraph to state clearly that the net subsidy is to be eliminated or offset completely with respect to the merchandise "sold, or likely to be sold, to the United States" or "exported to the United States."

**Department's Position:** The phrase "the merchandise," which is used in paragraph (a)(1), is defined in § 355.2(k) as "the class or kind of merchandise imported or sold, or likely to be sold, for importation into the United States, that is the subject of the proceeding." See also the preamble to the proposed rule on § 355.2(k). Therefore, the change is unnecessary.

Secs. 355.18 (b) and (c)

**Comment:** One party states that if the Commission reaches a negative determination under section 704(h) of the Act regarding an agreement eliminating injurious effect, the Department should resume its investigation as of the point in time it was suspended, rather than as of the date of the Department's preliminary determination, for the purpose of measuring statutory time limits. This procedure would reduce delay in the investigative process.

Another party suggests adding the following to paragraph (b)(3): "The Secretary may be guided in his decisions to accept an agreement to restrict the volume of merchandise by, among other factors, whether such agreements have been effective in other investigations involving that country."
Sec. 355.16(d) and (e)

Comment: Two parties contend that neither the Department nor the Customs Service has authority to order the retroactive collection of a cash deposit or posting of a bond. Therefore, they suggest that we delete the reference in paragraph (d) to cash deposit and bond and clarify that an affirmative finding of critical circumstances does not result in retroactive collection of deposits or posting of bonds.

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

Department's Position: The authority to impose retroactively a bond or cash deposit requirement is stated by implication in section 705(c)(3)(B) and (c)(4) of the Act. If Congress did not intend retroactive bonding or cash deposits, these provisions of the Act would be superfluous because there would be nothing to release or refund.

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

Sec. 355.16(f)

Comment: Several parties advocate elimination of the reference in paragraph (f) to a 15 percent increase in imports over imports during an "immediately preceding" period. They contend that a 15 percent increase in imports is not necessarily indicative of behavior that would warrant application of the retroactivity provisions of the law. Some of these parties believe that application of the 15 percent standard, even though it is not an absolute standard, may lead to arbitrary results and may discourage imports. On the other hand, two of these parties emphasize that in some cases (even those in which imports have not accounted for a preponderance of U.S. apparent consumption) the 15 percent standard may be too high.

Several parties object to the statement in the preamble to the proposed rule that "the portion of this paragraph which is subject to the 'preponderance' of U.S. apparent consumption, an increase in imports of less than 15 percent may be massive." Another party believes that the word "preponderance" should be defined in the regulation.

Some of the parties that object to the 15 percent standard suggest dropping it in favor of a completely ad hoc analysis based on consideration of historical and seasonal import patterns and other factors relevant to the decision whether the increase in imports is an attempt to circumvent the law. One party suggests that if the Department retains the 15 percent standard, the Department should provide that any increase of less than 15 percent (even if imports accounted for a preponderance of U.S. apparent consumption) will not be considered massive. Another party suggests adding to paragraph (f) a statement that any interested party may submit evidence to rebut the presumption created by the 15 percent general rule. That party also would delete the reference to "immediately preceding period" and would insert reference to a longer historical period, preferably three years. Other parties suggest raising the 15 percent standard to 25 or 50 percent or adding a requirement that the increase also must have accounted for five percent of total consumption.

One party notes that some increase in imports is necessary for a finding of "massive imports," even if the imports account for a preponderance of U.S. apparent consumption. Two other parties conclude that the statute does not require a surge in imports when the volume of imports is already "massive." They urge the Department not to require evidence of an increase in imports when the industry is already as the result of a sustained large volume of imports.

Two parties express concern with the Department's practice of relying on import statistics compiled by the Bureau of the Census to measure the volume and value of imports. One of these parties suggests adding to paragraph (f)(1) the phrase "based on the most up-to-date information available to the Secretary." This party suggests that the Department should ask the Customs Service to provide data on an expedited basis.

Department's Position: Neither the Act nor the legislative history defines "massive imports." However, the Department has concluded for the following reasons that, in order to be "massive," imports must increase significantly in relation to prior import levels or U.S. apparent consumption: (1) section 705(e)(1)(B) of the Act requires "massive imports * * * over a relatively short period," a test which appears to require a surge in imports over "normal" levels; (2) the purpose of the critical circumstances provision is to prevent circumvention of the law, a purpose which presupposes an increase in import activity associated with the possibility of assessment of countervailing duties; and (3) the requirement is consistent with the Department's established practice in defining the term "massive imports." The degree of increase an increase logically would depend to some extent on the size of the import volume in relation to total U.S. apparent consumption. Moreover, the Department would consider an argument in a particular case that it is unreasonable to infer that the increase in imports is attributable to the filing of a petition or the expectation of the filing of a petition.

As noted in the preamble to the proposed rule, "[t]he criteria described in the proposed rule are intended to clarify the bases for the Secretary's critical circumstances findings without adversely affecting the Secretary's administrative discretion. Any interested party may submit information to establish that an increase of less than 15 percent is massive or more than 15 percent is not massive under the circumstances. For example, a party may argue that a 15 percent increase is not massive in the case of the product where the market for the product is expanding rapidly. Any interested party may also submit information showing that the increase is a seasonal import trend unrelated to the filing of the petition. The 15 percent benchmark is not intended to limit the Department's discretion or responsibility to consider in each case the factors relevant to a decision whether imports are "massive." Paragraph (f) uses the 15 percent benchmark as a general rule—it is merely a rough guide which gives some element of predictability to the process.

Under paragraph (b), the Secretary is to make the determination "based on available information." The phrase "available information" implies that the Department has an obligation to use up-to-date information whenever possible. There is no need to incorporate additional language to this effect in paragraph (f). As a matter of practice, the Department makes every effort to obtain current and complete information for its decision on critical circumstances.

Sec. 355.16(g)

Comment: Two parties believe that the portion of this paragraph which permits the Department to extend the...
One party believes that paragraph (c) is misdirected, because it refers to 85 percent of the merchandise rather than 85 percent of the subsidy, as section 704(c)(2)(B) of the Act requires.

Department's Position: Section 704(b)(2) of the Act provides that if the Commission's determination regarding the elimination of injurious effect is negative, the investigation shall be resumed on the date of publication of the Commission's determination as if the Department's affirmative preliminary determination had been made on that date. If the Department suspends an investigation after the date of its preliminary determination, the Department makes every effort, upon resuming the investigation, to issue its final determination without delaying the investigative process.

Paragraph (b)(3) is intended to reflect the statutory requirement in section 704(d)(1) of the Act. To accomplish more fully this purpose, we are adding the phrase "in addition to other factors the Secretary considers appropriate," after the statement "the Secretary may take into account." This additional language will indicate clearly that the Department, as appropriate, may consider a factor such as the one the commenter suggests adding to this paragraph.

Paragraph (c) reflects the requirement in section 704(c)(1) of the Act, which states that the Department may suspend an investigation upon acceptance of an agreement from exporters which (under section 704(b) of the Act) "account for substantially all of the imports." The legislative history of this provision states that "substantially all of the imports" means "no less than 85 percent." S. Rep. No. 240, 96th Cong., 1st Sess. 54 (1979). Section 704(c)(2)(B) of the Act, which refers to 85 percent of the net subsidy, is implemented in paragraph (u)(2)(ii) of the regulation.

Sec. 355.18(d)

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

Department's Position: The legislative history of section 704(c)(4) of the Act states that "the language of the statute is general so as to provide the Authority with flexibility in administering the provision. However, the provision is not intended to be so general as to be meaningless." H.R. Rep. No. 317, 96th Cong., 1st Sess. 54, 66 (1979).

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

Moreover, to the extent practicable, all interested parties should have the opportunity to evaluate the possibility of a suspension of investigation in light of the Department's preliminary determination under § 355.15, an opportunity that would not exist under the requirement described by the commenter. Under § 355.15(g), the Department consults with the petitioner and affords the petitioner a right to comment on specific draft language. The Department concludes an agreement only if it determines that the agreement is in the public interest, including the interest of the domestic industry.

Sec. 355.18(e)

Comment: One party comments that, in order to ensure that effective monitoring of an agreement is practicable, this paragraph should be revised to require, at a minimum, the following information: (1) from the foreign government, a list of all recipients of benefits (and the dollar amount for each) under any and all programs; (2) from the foreign respondents and producers, evidence of selling prices to the United States on a quarterly basis for the past two years and copies of their financial statements for the current and past two years; and (3) from foreign respondents, statements by their certified accountants that, based on an examination of books and records, they find that no benefits or funds to cover operating losses have been received from the government. In addition, this party objects that the second sentence of paragraph (e) relaxes the Department of the obligation to require the type of information that may be highly relevant to any inquiry into continuing receipt of subsidies, such as those to cover operating losses.

Department's Position: Although the Department recognizes the importance of effective monitoring, we have not adopted the commenter's suggestion. Paragraph (g)(2)(i) provides that each suspension agreement shall contain a statement of the procedures to be followed to monitor compliance. The monitoring provisions of each agreement specify the types of information to be submitted. In practice, the Department requires submission of relevant information on a quarterly basis. The Department may consider it necessary to require all of the information identified by the commenter but does not believe it is necessary or appropriate to require such information in cases where it is not needed.

The second sentence of paragraph (e) does not relieve the Department of its obligation to monitor effectively each suspension agreement. If appropriate, the Department will obtain price information described in that sentence. The regulations merely state that the Department is not obligated to collect such information on a continuing basis.

Sec. 355.18(g)(1)

Comment: One party suggests that the 45-day time limit on submission of a proposed agreement is unnecessarily restrictive, but another party believes that the limit should be 60 days, so that consideration of the proposed suspension agreement will not occur concurrently with preparation of the final determination.

One party notes that this paragraph continues to permit the Department to suspend an investigation up to the date of its final determination, even though the purpose of a suspension agreement is to eliminate the unfair trade practices or the injurious effects rapidly [i.e., before the scheduled date for the final determination] in order to eliminate as much as possible the uncertainty and expense of the investigation. The party recommends that paragraph (g)(1) be changed to require that: (1) foreign respondents and governments submit, at the time they submit their responses to the Department questionnaire, any proposed suspension agreement and...
punitive action taken. One of these parties states that, in order to abrogate the agreement, the Department must make "a determination based on some sort of fact finding that there has, in fact, been a violation by the other party." This party also believes that, because paragraph (a) provides no right of comment, but paragraph (b) does provide such a right, the two paragraphs are in conflict.

One party comments that, in order to comply with section 704(1)(D) of the Act, paragraph (a)[4] must require the Secretary to notify the Commissioner of Customs if the Secretary determines that the violation of the suspension agreement was intentional. This party states that the requirement of paragraph (a)[4] as drafted—to notify Customs "if appropriate"—is too vague and suggests that Customs must itself determine whether the violation was intentional.

Department's Position: As stated in the preamble to the proposed rule, "The Secretary would use the 'fast track' approach in paragraph (a) when the Secretary decides that the record shows clear evidence of violation and that notice and comment are unnecessary." This is no unfairness or violation of due process when the Department's determination is based on facts in the record of the case which establish that the foreign government or the exporters have failed to comply with the terms of an agreement by their own act or omission. This regulation is consistent with the statute and legislative history.

Paragraph (b), which does provide for notice and comment, covers situations when the evidence of a violation is less compelling. It also covers situations when the Department has reason to believe that a suspension agreement no longer satisfies the public interest or monitoring requirements of the Act. Paragraphs (a) and (b), therefore, cover different situations and are not in conflict.

We are revising paragraph (a)[4] by deleting the phrase "if appropriate" and inserting in its place "if the Secretary determines that the violation was intentional." This change will make plain that the Department will refer the violation to the U.S. Customs Service when the Department considers that the agreement was intentionally violated.

Sec. 355.19[b]

Comment: One party complains that paragraph (b)[2] does not provide a meaningful right of comment, because, as drafted, this provision would allow the Department to take action after publishing a Federal Register notice requesting comment but before actually receiving and considering the comments. The party suggests that paragraph (b)[2] be amended: (1) to provide a reasonable time prior to the determination for submission and consideration of comments; and (2) to require that the Department explain the reasons and basis for its determination, including its response to the comments submitted.

Another party contends that it is illogical to impose suspension of liquidation, as provided under paragraph (b)[2](ii), from the date of first entry of merchandise under the agreement, because the Department's determination under this paragraph is based on its subjective evaluation whether circumstances have changed subsequent to the effective date of the agreement. The suspension of liquidation should apply only from the date the Department makes the determination under paragraph (b)[2](ii).

Department's Position: In order to avoid any confusion and better reflect the intent of this paragraph (its title is "Determination After Notice and Comment"), we are adding the phrase "and after consideration of comments received," before the phrase "the Secretary will" in paragraph (b)[2]. Because the notice published under paragraph (b)[1] will contain a time period for submission of comments that is reasonable under the circumstances of the case, it is not necessary to provide time limits in the regulation. Because the statute does not contain such a requirement, it also is not necessary to add to the regulation a special requirement that the Department provide reasons for its determination and address each comment submitted. However, it is the Department's general practice to make its determination and address comments received. See, e.g., Iron Ore Pellets from Brazil, 51 FR 10906 and 21931 (1986).

Regarding the effective date of suspension of liquidation, paragraph (b)[2](ii) was intended to conform to section 704(1)(A)(ii) of the Act, which provides for suspension of liquidation of all unliquidated entries of the merchandise made on or after the date the agreement no longer meets statutory requirements, even if that merchandise was entered before the date of the Department's notice under paragraph (b)[1]. We have amended paragraph (b)[2](ii) to reflect that intention more clearly.

Sec. 355.19(d)

Comment: Six parties believe the proposed definition of "violation" is inconsistent with section 704(1) and the legislative history of the Act to the extent that it defines a violation in terms of "significant" noncompliance. Three parties believe that any violation of the agreement must be treated as a violation, not just those which the Department considers significant. One of these parties states that the common law de minimis doctrine would apply to suspension agreements even without the proposed regulation.

Of the six parties, two suggest that the definition be modified to apply a standard based on inadvertence and inconsequential acts or omissions; three advocate deleting the entire definition; and one would define "violation" to mean "any breach of terms of a suspension agreement" and would add a list of acts by the signatory foreign government, producers, or exporters which, in addition to "breaches of specific agreements," shall be considered violations. These activities, which the party believes should be prohibited by the specific terms of any agreement, are: (1) failure to pay export taxes on the date of exportation; (2) payment of benefits constituting subsidies to domestic programs; (3) sale of products to domestic distribution or subsidiaries of a signatory corporation; (4) application by the signatory company for benefits from any covered subsidy program or other program reasonably countervailable under agency precedents.

Finally, one party expresses agreement with the proposed definition of "violation," because it clarifies that insignificant acts or omissions will not be considered violations.

Department's Position: The purpose of the definition of "violation" is not to permit the Department to ignore noncompliance or "de minimis noncompliance" with "intentional violations," but to distinguish noncompliance that warrants termination of the agreement from noncompliance which is de minimis and clearly does not warrant termination. This is similar to the distinction in contract law between "material" and "immaterial" breach. The word "significant" is too vague to accomplish this purpose. Therefore, we are modifying the definition to state that "violation means noncompliance with the terms of a suspension agreement caused by an act or omission of a signatory foreign government or exporter, except, at the discretion of the Secretary, an act or omission which is inadvertent or inconsequential." Even if the Department finds that the act or omission was clearly inadvertent or inconsequential and decides not to declare the agreement violated, the Department would consider whether it is appropriate to seek revision of the agreement under paragraph (b)[2](ii) (c)
documentation for verification of benefits and for renunciation of present and future benefits; (2) the domestic interested parties be given a reasonable time thereafter to comment on the proposed agreement; and (3) the Department make a final decision on the proposed suspension agreement not later than the scheduled date for the preliminary determination.

Three parties suggest that we revise paragraph (g)(1) to provide specifically that any party submitting to the Department a proposed suspension agreement serve it at the same time directly on domestic interested parties. 

Department's Position: The 45-day time limit in this paragraph establishes the minimum amount of time the Department requires to review a proposed agreement and provide the 30-day period to the petitioner under paragraph (2)(i). This time limit also affords ample time for the Department to prepare the final determination.

The statute and legislative history clearly permit the Department to conclude a suspension agreement any time prior to its final determination. See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 51–52 (1979). The purpose of permitting suspension of investigations is, as the commenter notes, to "permit rapid and pragmatic resolutions of countervailing duty cases." Id. at 54. See also H.R. Rep. No 317, 96th Cong., 1st Sess. 53–54 (1979). In practice, however, it is difficult to reach a pragmatic resolution of cases, especially complex cases, in significantly less time than that allowed by the statute. The Department proceeds cautiously in signing suspension agreements so that the Department may meet and discuss with the petitioner the proposed suspension agreement. One party believes that, although the consultation requirement is stated in the existing regulations, the Department has interpreted the requirement as satisfied by the separate consultation requirement in paragraph (g)(1)(i) and (g)(2)(ii) is intended to give the Department, not interested parties, an opportunity to review and, if appropriate, suggest modifications to the proposed agreement. The petitioner and other interested parties have ample opportunity to comment beginning on the date specified in paragraph (g)(2)(i).

Sec. 355.18(g)(2) and (g)(3)

Comment: Two parties state that the consultation requirement in paragraph (g)(2)(ii) should provide explicitly that, on request by the petitioner, the Department will meet and discuss with the petitioner the proposed suspension agreement. One party believes that, although the consultation requirement is stated in the existing regulations, the Department has interpreted this requirement as satisfied by the separate consultation provision (§ 355.31(h)(3) of the existing regulations) for submission of written argument and factual information and arguments.

Department's Position: The regulation as drafted addresses the commenters' concerns. Paragraph (g)(2)(ii) provides for consultation and paragraph (g)(3) provides for submission of written argument and factual information concerning the proposed suspension agreement. The regulation draws a clear distinction between the two types of communication. As a matter of practice, the Department may determine that the petitioner in each case the opportunity for "complete disclosure and discussion." S. Rep. No. 249, 96th Cong., 1st Sess. 54 (1979).

We agree that five days allows the Department too little time to which to consider written argument and factual information. Accordingly, we have changed paragraph (g)(3) to establish the deadline for submissions as ten days prior to the final determination. To limit the deadline to 14 days, as suggested, would unnecessarily restrict the Department's access to relevant information and arguments.

Unless the deadline stated in this paragraph is keyed to a date known to or determinable in advance by all parties to the proceeding, the deadline would be meaningless. The Department would sign a suspension agreement prior to the scheduled date for the final determination only after the Department has given all parties their opportunity to present and comment on the proposed agreement. This paragraph necessarily establishes only the maximum conceivable time limit on submissions.

Sec. 355.18 (i) and (j)

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

Regarding paragraph (i), one party contends that there is no statutory authority for prohibiting entry of merchandise, as provided in paragraph (i)(2). This party believes that imports in excess of the limits in a quantity restriction agreement are merely a violation of the agreement, to be addressed under § 355.19.

Department's Position: The effect of a negative final determination by the Department or the Commission is stated in § 355.17(c). We are adding to this paragraph, however, a sentence to clarify the effect of a negative final determination on the suspension agreement, in accordance with section 704(f)(3)(A) of the Act.

The authority for paragraph (j)(2) is found in section 704(d)(3) of the Act. The Department may order Customs to limit or exclude entry of merchandise under paragraph (j)(2) and may also determine under § 355.19 that the agreement has been violated. The cross-reference in paragraph (j)(2) is corrected to read "under paragraph (b)(c)" rather than "(b)(2)."

Sec. 355.19(a)

Comment: Three parties object to this paragraph because it provides that "without right of comment," the Department may determine that the signatory foreign government or exporters have violated an agreement and take enforcement action. They believe that fairness and due process requires right of comment before the agreement is abrogated.
or (b)(2)(i)(C) in order to eliminate the possibility of repetition of such acts or omissions.

Sec. 355.20(a)

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

Another party suggests that paragraph (a)(2)(i) should be modified to require inclusion of administrative and judicial precedents on which the legal conclusions of the Department are based. Regarding paragraph (a)(3)(i), one party would insert "publication of" before "the countervailing duty order under § 355.21."

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

Regarding paragraph (a)(2)(i), it is the Department's practice to explain in detail the legal conclusions for its final determination, as provided in this paragraph and in § 355.21(b).

Sec. 355.20(b)

Comment: One party suggests that this paragraph be modified to include a time limit for submission of upstream subsidy allegations. The party suggests that a reasonable deadline would be five calendar days before the date of the final determination in order to provide petitioners the maximum opportunity to raise the issue. In addition, the paragraph should provide that the Department may self-initiate an upstream subsidy investigation at any time prior to making the final determination.

Another party suggests deleting the first clause of the first sentence in paragraph (b)(2)(ii)(C) and inserting in its place the statement that the Secretary shall send its suspension of liquidation ordered in the preliminary determination on an entry-by-entry basis on the 120th day after the date of each entry. The purpose is to ensure that suspension of liquidation continues on an entry-by-entry basis, rather than on the basis of all entries covered by the preliminary determination, for the maximum time permitted by law.

Department's Position: As explained in the Department's position on § 355.15(d), we agree that there should be a time limit for requesting postponement of the scheduled determination to investigate upstream subsidies. Because of the greater workload associated with final determinations, we have modified paragraph (b)(1) to provide a 15-day time limit before the scheduled date for the Secretary's final determination (as opposed to the 10-day time limit specified in § 355.15(d)(1) for preliminary determinations). Paragraph (b)(3) adds a notice and publication requirement like that set forth in § 355.15(e)(2). The text of paragraph (b) in the proposed rule corresponds to the text of paragraph (b)(1) of the final rule, except for the last sentence which is now revised as paragraph (b)(3). If the Department decides on its own initiative to commence an upstream subsidy investigation, it may postpone the scheduled determination (or, under paragraph (b), the decision concerning upstream subsidization) by notifying all parties to the proceeding not later than the date of the scheduled determination, as provided in this paragraph and in § 355.15(e).

Regarding the 120-day limit on suspension of liquidation, paragraph (b)(1)(ii)(B)(iii) accurately reflects section 703(g)(2)(B)(ii) of the Act, which provides inter alia that "suspension of liquidation ordered in the preliminary determination shall terminate at the end of 120 days from the date of publication of that determination. * * *

This provision specifies that suspension of liquidation shall terminate 120 days after the date of publication of the preliminary determination, not 120 days after the date of entry of the merchandise. Consistent with Article 5(3) of the Subsidies Code, the statute clearly places a 120-day limit on the imposition generally of provisional measures, not on an entry-by-entry application of them.

Sec. 355.20(c)

Comment: Six parties argue that paragraph (c)(1)(i) is inconsistent with section 705(a)(1) of the Act and relevant legislative history. They contend that neither the statute nor the legislative history supports the 120-day limitation on provisional measures which is set forth in this paragraph. Although all six parties advocate deletion of this provision, one party states that at a minimum the provision should be redrafted to make the suspension of liquidation terminate on the 121st day after the date of entry. This party states that such a provision would satisfy the requirement of Article 5, para. 3 of the Agreement, because no single entry would remain subject to provisional measure for more than 120 days. Finally, this party also comments that paragraph (c)(1) is unclear, because it suggests that the Secretary will end suspension of liquidation only at the petitioner's request.

Regarding the request for postponement described in paragraph (c)(2), one party states that it is unfair to the exporter to allow the petitioner to obtain postponement at such a late date in the investigation. Another party comments that the request for postponement does not create a right to an additional hearing or briefing in the same investigation.

Department's Position: In United States Steel Corp. v. United States, 9 CIT 453 (1985), the Court of International Trade upheld the Department's interpretation of section 705(a)(1) of the Act, as reflected in paragraph (c)(1)(i) of the proposed regulation, and the court rejected plaintiff's contention that provisional measures must remain in force until the Department issues its final determination in the postponed investigation. The statutory scheme, moreover, provides for provisional suspension of liquidation no longer than 120 days from the date such suspension is first imposed in the investigation, not 120 days from the date it was imposed on each entry. See the Department's response to comments on § 355.20(b). We have clarified the language of paragraph (c) to provide that suspension of liquidation will end after 120 days with or without a request from the petitioner.

Regarding paragraph (c), it is not unfair to any interested party for the Department to entertain a request for postponement of the final determination submitted not later than 10 days before the scheduled date of the final determination. The exporter knows from the outset that antidumping and countervailing duty investigations are initiated simultaneously on the merchandise from the same or other countries, the Department will at the petitioner's request, postpone its final
or (b)(2)(ii)(C) in order to eliminate the possibility of repetition of such acts or omissions.

Sec. 355.20(a)

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

Another party suggests that paragraph (e)(2)(i) should be modified to require inclusion of administrative and judicial precedents on which the legal conclusions are based. Regarding paragraph (a)(3)(ii), one party would insert "publication of" before "the countervailing duty order under § 355.21."

Department's Position: We have revised paragraph (e) to state that "[n]ot later than 75 days after the date of the Secretary's preliminary determination, the Secretary will make a final determination * * * * * * * Regarding paragraph (a)(2)(i), it is the Department's practice to explain in detail the legal conclusions for its final determination. So as appropriate, a statement of relevant legal precedent. This practice fully complies with section 705(d) of the Act.

We have modified paragraph (a)(3)(iii) by inserting "publication of" before the phrase "the countervailing duty order under § 355.21."

Sec. 355.20(b)

Comment: One party suggests that this paragraph be modified to include a time limit for submission of upstream subsidy allegations. The party suggests that a reasonable deadline would be five calendar days before the date of the final determination in order to provide petitioners the maximum opportunity to raise the issue. In addition, this paragraph should provide that the Secretary may self-initiate an upstream subsidy investigation at any time prior to making the final determination.

Another party suggests deleting the first clause of the first sentence in paragraph (b)(2)(ii)(C) and inserting in its place the statement that the Secretary shall end his suspension of liquidation ordered in the preliminary determination on an entry-by-entry basis on the 120th day after the date of each entry. The purpose is to ensure that suspension of liquidation continues on an entry-by-entry basis, rather than on the basis of all entries covered by the preliminary determination, for the maximum time permitted by law.

Department's Position: As explained in the Department's position on § 355.15(d), we agree that there should be a time limit for requesting postponement of the scheduled determination to investigate upstream subsidies. Because of the greater workload associated with final determinations, we have modified paragraph (b)(1) to provide a 15-day time limit before the scheduled date for the Secretary's final determination (as opposed to the 10-day time limit specified in § 355.15(d)(1) for preliminary determinations). Paragraph (b)(3) adds a notice and publication requirement like that set forth in § 355.15(e)(2). The text of paragraph (b) in the proposed rule corresponds to the text of paragraph (b)(1) of the final rule, except for the last sentence which is now revised as paragraph (b)(3). If the Department decides on its own initiative to commence an upstream subsidy investigation, it may postpone the scheduled determination (or, under paragraph (b), the decision concerning upstream subsidization) by notifying all parties to the proceeding not later than the date of the scheduled determination, as provided in this paragraph and in § 355.21.

Regarding the 120-day limit on suspension of liquidation, paragraph (b)(1)(ii)(B)(iii) accurately reflects section 705(g)(2)(B)(ii) of the Act, which provides inter alia that "suspension of liquidation ordered in the preliminary determination shall terminate at the end of 120 days from the date of publication of that determination. * * * * * * * This provision specifies that suspension of liquidation shall terminate 120 days after the date of publication of the preliminary determination, not 120 days after the date of entry of the merchandise. Consistent with Article 5(3) of the Subsidies Code, the statute clearly places a 120-day limit on the imposition generally of provisional measures, not on an entry-by-entry application of them.

Sec. 355.20(c)

Comment: Six parties argue that paragraph (c)(1)(ii) is inconsistent with section 705(a)(1) of the Act and relevant legislative history. They contend that neither the statute nor the legislative history authorizes the 120-day limitation on provisional measures which is set forth in this paragraph. Although all six parties advocate deletion of this provision, one party states that at a minimum the provision should be redrafted to make the suspension of liquidation terminate on the 121st day after the date of entry for each entry. This party states that such a provision would satisfy the purpose of Article 5, para. 3 of the Agreement, because no single entry would remain subject to provisional measure for more than 120 days. Finally, this party also comments that paragraph (c)(1)(ii) is unclear, because it suggests that the Secretary will end suspension of liquidation only at the petitioner's request.

Regarding the request for postponement described in paragraph (c)(2), one party states that it is unfair to the exporter to allow the petitioner to obtain postponement at such a late date in the investigation. Another party comments that if the request for postponement is made after hearings have been held and briefs filed, the Department should specify, upon granting the request, that the postponement does not create a right to an additional hearing or briefing in the same investigation.

Department's Position: In United States Steel Corp. v. United States, 9 CIT 453 (1985), the Court of International Trade upheld the Department's interpretation of section 705(a)(1) of the Act, as reflected in paragraph (c)(1)(ii) of the proposed regulation, and the court rejected plaintiff's contention that provisional measures must remain in force until the Department issues its final determination in the postponed investigation. The statutory scheme, moreover, provides for provisional suspension of liquidation no longer than 120 days from the date such suspension is first imposed in the investigation, not 120 days from the date it was imposed on each entry. See the Department's response to comments on § 355.20(b). We have clarified the language of paragraph (c) to provide that suspension of liquidation will end after 120 days with or without a request from the petitioner.

Regarding paragraph (c), it is not unfair to any interested party for the Department to entertain a request for postponement of the final determination submitted not later than 10 days before the scheduled date of the final determination. The exporter knows from the outset that antidumping and countervailing duty investigations are initiated simultaneously on the same or other countries, the Department will at the petitioner's request, postpone its final
subsidy is to determine the country-wide average rate. This rate includes all companies, regardless of the level of benefits of each company. If the country-wide average is de minimis, our determination would be negative in an investigation. The rate for all companies, regardless of the level of benefits of each company, would be zero in an administrative review. If the country-wide average is above de minimis, we then compare individual company rates with the country-wide average rate to determine whether significant differentials exist. Because we have added to the definition of "significant differential" individual rates of zero and de minimis (see § 355.20(d)(3) and 355.22(d)(3)), it is at this point that we remove all zero and de minimis companies (as well as other companies with significantly different rates) from the calculation. As soon as at least one company is removed from the country-wide average, we no longer use the country-wide rate for duty deposit or assessment purposes. Rather, we assign individual company-specific rates to those companies that are "significantly different" (including zero rate and de minimis companies in an administrative review); the remaining companies form the basis of the "all other" rate. An "all other" rate is different from a country-wide rate because an "all other" rate is not based on all companies.

In our experience to date, we have identified three situations that require an exception to this general practice. One occurs when an investigation or review does not cover virtually all exports of the merchandise to the United States. For example, we examine only 60 percent of total exports, and we receive an exclusion request from a company in the remaining 40 percent, we would not include that company in the calculation of the country-wide average rate. In this instance, we would calculate the country-wide average rate in accordance with our general practice as though the 60 percent coverage defined the "universe" of exports. [N.B.: We no longer permit exclusion requests from companies within the 60 percent total coverage because such firms would achieve the same result with our zero or de minimis standards. See the Department's response to comments on § 355.14.] A second exception is when we have no company-specific export data, only aggregate export data from a government (such as in the case of Live Swine and Frozen Pork Products from Canada, 50 FR 25097 (1985)). This occurs when there is an extremely large number of exporters. In such a case, companies that request and are granted exclusion would be taken out of our calculation of the country-wide rate.

A third exception occurs when we use generally recognized sampling techniques. Companies included in the sample may not request exclusion; they may, however, be excluded if the Department determines that they received zero or de minimis benefits. Although such companies would be excluded from the order, they would be included in the calculation of the country-wide rate. We would apply the same methodology in an administrative review; a company included in the sample may submit notification of zero or de minimis benefits and obtan a zero or de minimis rate, but the company still would be included in the calculation of the country-wide rate. To do otherwise would upset the accuracy of the sample.

The Department is aware of the potential for evasion of an order resulting from the shifting of export business to a related company with a lower company-specific rate, and believes this is one more good reason for the presumptive country-wide rates. However, rather than require by regulation that all foreign producers and exporters that are related or government-owned be treated as a single entity for deposit and, under § 355.21(a), assessment purposes, the Department believes it is more appropriate to address and correct this problem on a case-by-case basis. The rule suggested by the commenter likely would result in unfair treatment for many producers and exporters. Whether or not a company is "government owned" for purposes of section 706(a)(2)(B) of the Act will depend on the facts developed in a particular proceeding.

We have revised paragraph (d)(1) for clarity based on the comments received.

Section 355.20(c) and (f)

Comment: Six parties characterize paragraph (e) as an attempt to penalize producers or exporters that make false certifications. They believe the penalty is unduly harsh, especially if the certifications described in § 355.14 were made in good faith. One party contends that the provision contravenes section 706(a)(2), because the Department has no authority to ignore an individual rate, once calculated, if that rate differs significantly from other calculated rates. Four parties suggest that we delete paragraph (e). Two parties suggest that we limit the rule to situations in which we find that the certifications under § 355.14(b) were made in bad faith, with the burden of proof on the foreign producers or exporters to show that the false certifications were made in good faith.

Two parties suggest that the Department automatically exclude from a final determination all companies for which the Department calculates a de minimis rate.

One party wonders whether there is a conflict between paragraph (e) and § 355.14(c). Paragraph (e) appears to require the Department to investigate each request for exclusion (and verify factual information) in order to calculate an individual rate, whereas § 355.14(c) states that the Department will do so "to the extent practicable."

The same party suggests that we modify paragraph (f) to limit the Commission's right to disseminate business proprietary information supplied by the Department.

Department's Position: As proposed, paragraph (e) might require the Department to apply a country-wide rate to a company that, by the standard described in paragraph (d), received a net subsidy that was significantly different from the weighted-average net subsidy calculated on a country-wide basis for the period. To this extent, we believe the proposal is inconsistent with paragraph (d)'s requirement that significantly different rates calculated by the Department be separately stated in the final determination. The paragraph is not intended to penalize interested parties that have submitted requests for exclusion. Moreover, it is neither necessary nor appropriate for the Department to attempt to determine whether or not a particular certification was submitted in good faith. Therefore, we have revised the last sentence of paragraph (e) to conform to paragraph (d). That sentence now reads, "The individual rate, calculated in accordance with paragraph (d), will be either the weighted-average net subsidy calculated on a country-wide basis or the individual rate calculated for that person."

The Department would exclude automatically any company that received a de minimis net subsidy. See Department's response to comments on § 355.14(c).

Paragraph (e) is consistent with § 355.14(c) because, like the latter section, it does not require the Department to investigate all requests for exclusion. Only if the Department conducted an investigation based on a request submitted under § 355.14 and found a net subsidy for the person investigated would paragraph (e) apply.
certifications should be uniform for the foreign government and foreign companies. (2) The certifications should cover any and all subsidies, not just net subsidies and not just subsidies previously found countervailable. (3) Does "received" include subsidy benefits allocated to a current year from a subsidy provided in a previous year? (4) The regulation should include the form of the certification and indicate who may certify. For example, certification could be in the form of an affidavit attested to by a responsible officer of the producer who can legally commit the company and, for the government, the responsible official of the government entity(ies) concerned.

**Department's Position:** Regarding the timetable for requesting and conducting reviews, we agree that proposed §355.22 does not comply with the statutory direction that a review be conducted "at least once during each 12-month period beginning on the anniversary of the date of publication of the order," "We have, therefore, amended paragraph (c)(7) to require that the review be completed not later than 365 days after the anniversary month (replacing "Secretary's initiation of"). Consequently, reviews will be completed by the end of the anniversary month. In order to ensure that the Department can meet the new deadlines for completing reviews during the period of transition to the new final rule, we have provided that the effective date of §355.22 (a) and (c) will be the first day of the first month beginning 90 days after the publication of these rules. Prior to that date, the interim final rule published on August 13, 1985 (50 FR 32556) will apply.

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

A one-month request window is sufficient for all interested parties to request a review. As a matter of practice, the Department does publish in the Federal Register at the beginning of each month the most recent listing of reviews which can be requested during the month. However, it is the responsibility of interested parties to follow developments in a proceeding, even in the absence of published notice at the beginning of the anniversary month. Inclusion of listings of various estimated countervailing duty rates in the published notice is unnecessary, especially because our experience has been that almost all parties discuss their options with the Department prior to filing a request for review.

The Act does not provide for expedited administrative review. Prior to the normal request month, interested parties may request that the Department conduct a changed circumstances review as described under §355.22(h). The suggestion that new entrants after the publication of a countervailing duty order be excluded, if our first examination of those exporters shows an absence of a subsidy, is not acceptable. Countervailing duty orders apply to all imports from a covered country, except those from firms specifically excluded from the countervailing duty rates. Exclusions are based on the examination of a period prior to initiation of the investigation, when the respondent firm presumably acted without regard to the potential imposition of duties under the countervailing duty law. Under these circumstances, the Department cannot predict with some reliability the firm's future actions. If we were to follow the proposal in the comment, it would be simple for a firm, knowing of the countervailing duty order, to enter the market, ship for one year or less without accepting subsidies, be "excluded," and then begin to accept subsidies. We believe the revocation procedures of §355.25 provide the additional measure of security necessary before revocation.

Objections to the provision in paragraph (a)(1), which provides that interested parties may request an administrative review of all producers or exporters covered by an order or agreement, miss the thrust of the argument. The presumption arising from the requester's and government's examination of those exporters shows an absence of a subsidy, if demonstrated, automatically amounts to a significant difference. As to the suggestion that we amend paragraph (a)(1) to require review on behalf of an industry, no such requirement is imposed by the statute. Although section 751(a)(1), as amended by the 1984 Act, specifies the acceptable requesters, the legislative history specifies that an appropriate requester is "an interested party . . . ." H.R. Rep. No. 725, 98th Cong., 2d Sess. 7 (1984). Therefore, this paragraph of the regulations does not limit an "interested party" to a domestic interested party. Moreover, Section 777(i) of the Act does not limit interested parties to domestic parties acting on behalf of an industry. If the domestic industry no longer supports the continued existence of an order, an interested party can request a changed circumstances review under paragraph (b) of this section.

Objections to the special requirements imposed on a person requesting review of only that person are misplaced. We impose no restriction on requesting a review of all producers or exporters under paragraph (a)(1). Because paragraph (a)(2), however, is designed to deal with only one class of producers or exporters (those receiving zero or de minimis benefits, i.e., a significantly different rate), we must be reasonably satisfied that the producer or exporter is entitled to that rate. Thus, we require the requester's and government's certification that the requester is so entitled. Because significant differences, other than zero or de minimis, cannot be calculated absent a country-wide review, we make no provision for individual producer or exporter review other than those involving firms claiming zero or de minimis benefits. Regarding the comments on the certifications described in paragraph (a)(2), see the Department's position on §355.14(b). Although the regulation does not specify a particular form for certification, the form described by the commenter would be appropriate.

Sec. 355.22(b) and (c)

**Comment:** Regarding the period under review, one party suggests that we modify the phrase "the most recent completed reporting year of the government of the affected country" in paragraph (b) to refer to the "companies", not the governments', reporting year, because "the companies' fiscal years are far more relevant.

Regarding the procedures set forth in paragraph (c), one party contends that the Department should be required to assure individual notice of initiation of a review to all parties to the original.
investigation or most recent review. If
the Department initiates a review of an
individual producer or exporter under
paragraph (a)(2) by publication of a
notice under paragraph (c)(1), the
Department should give other producers
and exporters 30 days from the date of
publication of the notice to inform the
Department that they also want a
review.

One party states that the Department
does not have authority to limit the
number of interested parties to which it
sends questionnaires, as provided in
paragraphs (c)(2), (d)(3), and (f)(3),
because the sampling authority in
section 777A of the Act is limited to
antidumping cases. The regulation
should provide that the Department will
mail questionnaires to six producers of
the affected country and to all known
foreign producers or exporters of the
merchandise.

Finally, one party believes the 365-day
time limit in paragraph (c)(7) for issuing
the final results of administrative review
should be extended to 366 months with
the possibility of extension to nine
months for reviews under paragraph
(a)(1) that involve a large number of
respondents. This party states that the
Department should expedite reviews in
order to reduce uncertainties caused by
long periods of suspension of
liquidation. See also comments on
paragraph (a).

Department's Position: In examining a
period, the Department must often rely
on both government and firm records.
Government and firm reporting (fiscal,
tax, etc.) years often differ. We have
found government records are most
reliable while firm records are a point
in the actual assessment of additional
duties. See section 751(h).

We do not agree that all parties to the
initiated review must receive actual notice of the
initiation of the Department's response to comments on
the certification of the Department to have
made a material misrepresentation of fact in
the certification, and another party
would require the Department to hold a disclosure conference, if
requested, promptly after issuing the
final results in an administrative review.
In addition, we have clarified that the
purpose of disclosure, whether after the
preliminary or final results, is only to provide an
explanation of the calculation
methodology used in reaching the
results.

Sec. 355.22(d)
Comment: Several parties incorporated by reference the comments
they made in response to § 355.20(d) of
the proposed rule on calculation of
individual rates in the final
determination. One of these parties
states that it is "even more imperative
that every effort be made to calculate
individual rates during the review
process since the determination results in
the actual assessment of additional
duties." See comments in this preamble on § 355.20(d).

Department's Position: See the
Department's response to comments on
§ 355.20(d).

Sec. 355.22(f)
Comment: Two parties suggest that
we revise paragraph (f)(2) to provide
that the Secretary "shall," not "may,"
issue final results that include a zero
rate of assessment and cash deposit for
the merchandise of producers and
exporters that the Department has
verified did not receive countervailable
benefits above de minimis during the
period review.

One of these parties objects to
paragraph (f)(3) to the extent that it calls
for imposition of a rate on the producer
or exporter which exceeds the amount of the
subsidy found to exist with regard to
that producer or exporter.

Six parties object to paragraph (f)(6)
for one or more of the following reasons:
its not authorized by law and is based on
a review requirement not authorized
by law; and it penalizes producers for
actions and conditions beyond their
control, such as deficiencies in the
certification mechanisms of their
governments, the Department's lack of
time and resources to conduct a
complete verification of all alleged
subsidy programs, the Department's
decision to change its methodology, or
the unintentional or intentional failure
of other producers and exporters to pass
the certification methods. Two parties
request that we delete the paragraph.
One party suggests that a bar to
additional individual reviews should
apply only to a producer or exporter
found by the Department to have
made a material misrepresentation of fact in
the certification, and another party
would require the Department to have
in mind the discretionary authority to requests for
review from the same producer or
exporter and would make an exception
if that producer or exporter provides
good cause for such a review.

Department's Position: If the
Department is able to verify that an
individual producer or exporter
received no net subsidy during the period of
review, it will issue instructions to the
Customs Service to assess no
countervailing duties on exports (or
entries) during the period of review. If
the Department is able to verify that an
individual producer or exporter received
no net subsidy during the period
subsequent to the review period, it will issue
instructions requiring a cash deposit of
estimated countervailing duties. The use of
"may" in the proposed rule was
intended to address both assessment
and cash deposits. To avoid any
ambiguity, we have modified the rule to
require assessment of a zero rate and
collection of the appropriate cash
deposit.
determination in the countervailing duty investigation. Moreover, the purpose of the postponement is to facilitate and simplify parallel investigations for the interested parties, as well as for the Department and the Commission. Even if the request is submitted at a date late in the investigation, this purpose is served by granting the requested postponement. Of course, postponement would not create a right to an additional hearing or extension of the briefing schedule in the countervailing duty investigation if a hearing had already been held and the deadlines for submitting information and written argument had already passed. See §§ 355.31 and 355.36.

We have added a new paragraph (c)(3) to provide for notice to all parties to the proceeding and publication of notice in the Federal Register. This provision corresponds to the notice of postponement provisions in paragraph (b)(3) and § 355.15(e)(2).

Sec. 355.20(d)

Comment: Several parties object to the benchmark in paragraph (d)(3) for identifying a significant differential between a company-specific and a country-wide countervailing duty rate. One party believes that the definition of "significant differential" is so high that it does not conform to Article 4, para. 2 of the Agreement. Other parties state that the regulation does not conform to the legislative purpose of section 706(a)(2) of the Act, because the benchmark would apply even in the absence of evidence of an administrative burden associated with calculation of company-specific rates. Several parties urge the Department to reduce the benchmark in order to minimize the number of situations in which the expectation of averaging may cause foreign firms to maintain or increase, rather than decrease, their reliance on subsidies.

The following benchmarks are recommended as a substitute for the "greater of 10/25" in the proposed rule: greater of 5/25; lesser of 5/25; lesser of 10/25 or, alternatively, more than 10 percentage points; lesser of 5/50; and more than 0.5 percent or some other minimal level. One party suggests that the Department should calculate a company-specific rate for each company to which it sends a questionnaire. Four parties believe that the best approach is to eliminate the benchmark completely and provide in the regulation that the Department will determine whether a significant differential exists based on an evaluation of all relevant factors in each case. Under this approach, the Department would consider the nature of the product and market and the extent of the administrative burden associated with calculation and application of company-specific rates (as determined by the number of non-government-owned firms investigated or a specific company's share of the administrative burden on the Department and the Customs Service). Three parties state that the country-wide average should not include companies with zero or de minimis rates.

According to two parties, paragraph (d) should provide that, in applying company-specific rates, the Department will treat as a single company all companies that are directly or indirectly related to each other through stock or government ownership. The reason is that producers that are subsidiaries of a common state-owned parent can evade countervailing duties by making the subsidiary with the lowest individual rate the exporter to the United States for the group.

Several parties comment that paragraph (d)(1) lacks clarity. One party suggests that the beginning of the paragraph should be modified to read "For a producer or exporter that is government owned". In addition, this party suggests that we define "government owned" to mean more than 50 percent owned, directly or indirectly, by the government.

Department's Position: Paragraph (d) is consistent with the Agreement for the reason stated in this preamble in the Department's response to comments on § 355.14(c). It is consistent with section 706(a)(2) of the Act, because the Department has developed a reasonable standard for measuring a "significant differential."

The purpose of section 706(a)(2) is to "lessen the administrative burden on the administering authority stemming from implementing company-specific rates." H.R. Conf. Rep. No. 1156, 98th Cong., 2d Sess. 180 (1984). Congress recognized that the administrative burden of calculating and assessing company-specific rates is significant, and did not require the Department or the Customs Service to quantify the burden in each case. Such a requirement would simply have added in additional administrative burden and, to some extent at least, have undermined the purpose of section 706(a)(2). Instead, Congress created a presumption in favor of country-wide rates. Unlike the antidumping law, which is directed at company-specific activity, the countervailing duty law is directed at government or government-sponsored activity. Country-wide rate counteravoiding duty rates are well-suited to discourage such foreign subsidization. A central purpose of the law is to encourage foreign governments not to provide competitive benefits to their exporting industries. The best way to accomplish that goal is by continuing to treat the foreign government as the central actor, rather than by piecemeal policing of individual companies to encourage them not to use programs offered by those foreign governments. Furthermore, assigning the same rate to all companies encourages those that receive less than the maximum available to seek maximal subsidization, which would probably overburden the foreign government. In that event, the foreign government would be driven to lower the overall level of subsidization or eliminate the program.

Congress directed the Department to develop a "reasonable" standard for determining under section 706(a)(2)(A) what is a "significant differential between companies receiving subsidy benefits." See id. The Department considered all relevant factors, including the purpose of the countervailing duty law, the nature and extent of the administrative burden in implementing company-specific rates in past cases, and the concerns of the respondent firms and importers. The Department also evaluated the effect that the various possible approaches would have on these factors. We agree that the benchmark can reach anomalous results when the country-wide average is 10 percent or less and an individual firm has been found to have a rate several percentage points below that rate. For example, a firm with a one percent rate would, under the proposed rule, be subject to the country-wide average if that average was 10 percent or less. In response to this anomaly, we have modified the proposal to provide a benchmark of the greater of five percentage points or 25 percent.

For the reasons described in the preamble to § 355.20(d) of the proposed rule, we believe the benchmark in paragraph (d), with this modification, is reasonable. A benchmark is preferable to a completely ad hoc, case-by-case analysis, because it provides an important element of predictability and it lessens the administrative burden significantly.

Except in investigations or administrative reviews in which the Department does not investigate every company (see the Department's response to comments on § 355.14), the country-wide rate includes all companies. The first step in the Department's calculation of the net
Paragraph (f)(3) does not call for the imposition of an excessive rate. The assessment and cash deposit rate will be based on the net subsidies found for the individual producer or exporter. The thrust of the comments regarding the Department's refusal to entertain individual producer or exporter requests following the failed verification of certifications is that one firm's failure ought not to affect the ability of another firm to request a review. It is not, however, deficiencies in the firm's certification that require this provision. Rather, if the government certification is found to be incorrect, we must assume that the government's certification mechanism is faulty. The Department cannot rely on a faulty mechanism as a basis for action, even though this mechanism is not within the control of a particular producer or exporter. Of course, it is hoped that this provision will encourage all governments and firms to be extremely cautious in preparing certifications.

Sec. 355.22(g)

Comment: Three parties contend that, for the purpose of automatic assessment, the Department should always apply the most recently determined rate. For example, the cash deposit collected on entries made while a review is being conducted are based on a rate established by a determination made before publication of the final results of the on-going review. These parties believe that, under these circumstances, the cash deposit rate is a primary factor entering into each interested party's decision whether to exercise its right to request a review, and would make no sense to change the rate after the time for request has expired. Interested parties that believe the assessment level should be higher or lower than the estimated countervailing duties deposited at the time of entry can request an administrative review. In addition, the use of the cash deposit rate required at the time of entry is in accordance with the purpose of the entire review—upon request to make adjustments for under- or over-collections as well as collecting or paying interest. In any event, the failure of an interested party to file a timely request for review constitutes a determination under section 751 of the net subsidy for the entries made during the review period.

We emphasize that when no interested party requests an administrative review, the Department will instruct Customs to liquidate the entries for that review period at the rate deposited at the time of entry. This automatic assessment will occur regardless of whether litigation is pending regarding a prior administrative review or the initial subsidy investigation. See NTN Bearing Corp. of America v. United States, Slip Op. 88-101, 12 CIT (November 23, 1988) [citing Fundacao Tupy S.A. v. United States, Slip. Op. 67-49, 11 CIT (August 3, 1987)].

Sec. 355.22 (h) and (i)

Comment: One party suggests that we delete the phrase "If appropriate" in paragraph (h)(1)(vi), because timely disclosure would always be appropriate. Another party wonders whether section 762 of the Act refers to the "President," not "a designee." Because "a designee" might be an official not confirmed by the Congress or responsive to requests to appear before Congress, the authority should be restricted to the President. Another party wonders whether section 762(b) of the Act would preclude the preliminary determination described in paragraph (i)(4), and whether the Department would verify information received. Another party states that, in order to conform to the requirement in section 762 that the order be "effective with respect to merchandise entered on and after the date on which the agreement terminates," we should revise paragraph (i)(11) to require publication in the Federal Register of the countervailing duty order on or before the date on which the agreement terminates.

Department's Position: We have modified proposed paragraph (h)(1)(vi) (now paragraph (h)(1)(vii)) by deleting the phrase "If appropriate." This change would make it necessary for the Department to provide a further explanation of the determination, if there is additional information about the determination that can be disclosed, to any party to the proceeding that requests disclosure. As modified, this paragraph conforms to paragraph (c)(6) of this section and to § 355.15(h).

Paragraph (h)(1) does not place any limit on a party's right to request a changed circumstances review or to bring relevant information to the Department's attention. We agree that it is appropriate to clarify specifically that changed circumstances reviews may be requested at any time. Therefore, we have added in a new paragraph (h)(2) the suggested sentence.

We note that we have added a new paragraph (h)(1)(iii) providing that the Department will conduct verifications if appropriate. We also note that we have added a new paragraph (h)(1)(v) to clarify that the Department will hold a disclosure conference, if requested, promptly after issuing the final results in a changed circumstances administrative review.

The reference to "a designee" in paragraph (i) is a recognition of the President's authority to delegate the authority vested by section 762 of the Act and is necessary for sound management purposes. The decision called for by paragraph (i) is significant and would be made either by the President or by another high-ranking official in the Executive Branch. Section 762(b) provides that the Department shall prescribe procedures for conducting proceedings under section 762. The procedures prescribed in this paragraph, including the provision for a preliminary determination, are consistent with section 762 and relevant legislative history. Generally, these proceedings are analogous procedurally to administrative reviews, and timely verification of information is required would depend in part on the facts of each case. Regarding the effective date of the order, the Department would provide in the published notice an effective date that conforms to section 762(b). The Department cannot issue or publish the order until it knows that the agreement has terminated. For example, if an agreement accepted under section 704(a)(2) of the Act is extended, there would be no need to publish an order.

We note that we have added a new paragraph (i)(12) to clarify that the Department will hold a disclosure conference, if requested, promptly after issuing the final results in a review conducted at the direction of the President.

Sec. 355.23

Comment: One party claims that this section is inconsistent with section
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707(a) of the Act and the Department's practice. Section 707(a) states that the "cap" on assessment of duties on entries made to the Department's preliminary determination under section 703(d)(2) and the Commission's final determination under section 705(b) is the cash deposit rate set by the Department in its preliminary determination under section 703(d)(2) of the Act. Section 707(a) does not authorize the Department to establish a new cap at the time it issues its final determination under section 705(e) of the Act, as this section of the regulation would do.

Department's Position: Section 355.23 is consistent with section 707(a) of the Act and the Department's practice. Section 707(a) of the Act provider that the "cap" on the assessment of duties on an entry made prior to the date of the Commission's final affirmative determination is the amount of the cash deposit or bond required as security for that entry. For an entry made between the Department's preliminary and final determinations, the cash deposit or bond is set by the Department's preliminary determination. For an entry made after the final determination, the cash deposit or bond is set by the Department's final determination. Section 707(a) excludes the Department from changing the amount required as security (the bond or deposit rate) when it issues its final affirmative determination. In fact, if the rate in the final determination is higher than the rate in the preliminary determination, it is necessary to order the longer security, in order to assure that the duty can be collected at the appropriate time. The Department has consistently followed the practice reflected in § 355.23. See, e.g., Forged Undercarriage Components from Italy, 46 FR 52111, 52116 (1981).

Sec. 355.24(b)

Comment: One party wonders where the rate described in paragraph (b) may be obtained.

Department's Position: The rates under section 6221 of the Internal Revenue Code of 1954 are established by the Internal Revenue Service and may be obtained from that agency.

Sec. 355.25

Note: In cases in which the Department has issued tentative revocations prior to the effective date of these regulations, it will complete the revocation procedure under the existing regulations. In all other cases, the new regulations will apply.

Sec. 355.25(a)

Comment: Eight parties object to the three- and five-year time periods for revocation or termination based on the absence of a subsidy that are set forth in paragraph (a). One party would apply a one-year rather than three-year standard for the government in order to make the policy regarding revocations and terminations consistent with the policy in investigations. In investigations, this party notes, the Department issues a final negative determination when the government has abolished the countervailable subsidy programs, without requiring any established waiting period. Three parties suggest keeping the current two-year period of no subsidization for both the government and the producers and exporters, because they believe the Department's current practice has worked well. Alternatively, two parties state that if the current two-year period is to be extended, three years for both the government and the companies would be appropriate. Two parties recommend five years for both the government and the companies. One of these parties argues that evidence of government abolition of a subsidy program for a period of three years may not ensure that no company is receiving benefits from a pre-existing program, because the Department's practice is to allocate certain benefits to later years. Finally, the same party believes that the required period of no subsidization, whatever its length in years, should end on the date of the Department's tentative determination to revoke.

Regarding the consequences of receipt of a net subsidy subsequent to revocation or termination, three parties would like the reinstatement provision in paragraph (a)(3)(iii) expanded to cover both the government and any or all producers and exporters. Two of these parties believe the Department should consider the original injury finding to have continuing validity unless the Commission subsequently has made a finding of no injury under section 751 of the Act. One of these parties suggests that the Department should immediately conduct a changed circumstances review under § 355.22(h) if revocation was based on a request by the government (paragraph (a)(1)) or all producers and exporters (paragraph (a)(2)). One party believes the references in paragraphs (a)(1)(ii), (a)(2)(ii), and (a)(3)(ii) to "substantially equivalent programs" are ambiguous. As a substitute, the party would use "countervailable subsidy programs."

Department's Position: The adoption of a three-year period for revocation or termination based on the government's elimination of countervailable subsidy programs does not substantially modify the period of time that must be examined under the existing regulations. Even though the existing regulations require a two-year period before revocation of a subsidy, the practice adopted in antidumping proceedings requires the examination of, at a minimum, about two years and nine months. That is because the Department examines the period between the end of the two-year period and the date of the subsidy revocation or termination (the "gap period"). The adoption in § 355.25(c)(3) of the day after the end of the three-year period as the effective revocation date eliminates the need for an examination of the gap period.

Section 751(c) of the Act grants the Department broad authority to revoke orders and terminate investigations, after review under section 751. The Department has long held the view that the absence of a subsidy program, alone, is an insufficient basis for revocation. Section 355.42(a) of the existing regulations provides that the Secretary must be "satisfied that there is no likelihood of resumption of the subsidy." A number of factors enter into this question of likelihood of resumption, including the length of time over which producers and exporters have been functioning without a subsidy. Because government elimination of subsidy programs can generally only be reversed through relatively transparent and time-consuming actions (legislation, regulations, or administrative determinations), we believe that the three-year period in § 355.25(a)(3)(i), in combination with the government certification required in § 355.25(b)(1), is a sufficient basis to conclude that no resumption of subsidies is likely. As to the shorter and longer periods recommended by commenters, the Department is neither satisfied that the shorter periods are sufficient to meet the likelihood requirements nor convinced that the longer periods are necessary. Thus, we will adhere to a period substantially the same as that contemplated by the existing regulation for government elimination of benefits.

Regarding the contention that a one-year rather than a two-year standard should apply to governments that eliminate programs in order to make the policy on revocation consistent with that in investigations, the analogy to investigations is not appropriate. The Department makes a negative determination rather than a three-year standard on any subsidy program that it finds was abolished prior to the date of initiation of the investigation. In abolishing the program, the government presumably acted without regard to the U.S.
countervailing duty law and certainly without regard to the not-yet-issued countervailing duty order. Under these circumstances, the Department can be assured to a reasonable degree that the government will not reinstitute the subsidy program in response to any specific U.S. action under the countervailing duty law. On the other hand, elimination of subsidy programs after the date of initiation of a U.S. countervailing duty investigation or after publication of a U.S. countervailing duty order provides no such reasonable assurance. Elimination of the program under these circumstances might well be the government's short-term response to the U.S. action. The three-year waiting period for revocation provides a reasonable measure of assurance that the government has no intention of reinstating the program or other countervailable programs.

Regarding non-use by producers or exporters of programs, we are not convinced that a three-year period provides the Department adequate assurance that there is no likelihood of resumed use of subsidies. This is beginning the approach to company-specific revocation for such producers or exporters. In countervail programs, the Department intends to proceed cautiously to ensure that it grants no unwarranted revocations. Thus we believe that the five-year period is necessary before revocation or termination.

Regarding the concern that subsidies may be allocated to periods after the period of receipt, the Department will not revoke an order or terminate a suspended investigation as long as there is a net subsidy on the merchandise, computed in accordance with the Department's subsidy methodology.

Although the Department has the authority to reinstate a producer into an existing order, the Department does not believe it has the authority to reinstate a revoked order absent a new investigation. Thus, the reinstatement provisions apply only to partial revocations during the existence of an order. The Department, of course, has the authority to conduct an investigation when it concludes that governments or producers or exporters have not complied with the certifications required by paragraphs (b)(1) and (b)(2) of this section.

In paragraphs (a)(1)(ii), (a)(2)(ii), (a)(3)(ii) and (b)(1), to eliminate any ambiguity, we have, as requested, dropped the reference to "substantially equivalent programs" and inserted in its place the phrase "countervailable programs."

Sec. 355.25(b)

Comment: One party believes that a request for a review under this section, which the party characterizes as "essentially a changed circumstances review," should be permitted at any time after the initial qualifying period of no subsidies.

Another party states that a request by a foreign government for revocation or termination under the standard set forth in paragraph (a)(1) should include certifications by the foreign producers and exporters. In addition, any request submitted under paragraph (b) should include the agreement of the party or the government to immediate reinstatement of the order.

Department's Position: The changed circumstances review mechanism should not be available to a party that fails to use the request and review mechanism established in paragraphs (b) and (c) of this section, which allows an opportunity for a revocation in the shortest possible time, given the minimum waiting period requirements.

Certifications by producers and exporters with requests for revocation as a result of the government's elimination of programs would be superfluous. Section 355.25(b)(1) requires the government to certify that it will neither reinstate the program nor substitute countervailable programs. See the Department's response to comments on § 355.25(a) for a discussion of the reinstatement provisions.

Sec. 355.25 (c) and (d)

Comment: Two parties recommend that, given the importance of revocation and termination, the Department directly notify domestic interested parties at the time it publishes the notices described in paragraphs (c)(2)(i) and (d)(4)(i). They point out that, especially for small businesses located outside the Washington, D.C. area, notice in the Federal Register may be insufficient. Regarding paragraph (d)(4)(i), one of these parties notes, "while it may well be that the passage of time has made a case moot, it is at least effectively, the passage of time has simply ratified the finding in the investigation to the point where no one bothers to contest it."

Regarding "changed circumstances" revocations or terminations described in paragraph (d)(1) and (d)(2), one party believes that the Department should revise paragraphs (d)(1) to clarify the meaning of "changed circumstances."

Specifically, changed circumstances do not exist if one or more of the original petitioners or a domestic producer whose production capacity accounts for a significant portion of the domestic industry continues to have an interest in the proceeding. Should some but not all members of the domestic industry favor revocation or termination, this party believes that the Commission is "the appropriate body to weigh the conflicting concerns of the members of the domestic industry."

Comment: Another party suggests that we revise paragraph (d)(2) to provide that a changed circumstances review may be requested at any time.

Regarding the "sunset" provision in paragraph (d)(4), one party wants the provision deleted, because there is no statutory basis for it and it cannot be justified otherwise. For example, keeping an inactive order in effect does not adversely affect the Department's resources. Another party would have us extend the period for objecting to the proposed revocation, as described in paragraph (d)(4)(ii), from one to two months. A third party recommends that the procedure described in paragraph (d)(4)(i) 90 days before the third anniversary month followed by revocation or termination if no objections are received by the end of that anniversary month.

Department's Position: Section 355.31(a) requires that any document presented to the Department, including a request for revocation or termination under § 355.25(b), be provided to all parties on the Department's service list. It is then the party's responsibility either to watch for publication of the initiation and announcement of the request required by paragraph (c)(2)(i), or to contact the Department for information. As to the notice of intention to revoke or terminate required by paragraph (d)(4)(ii), actual notice to each party to the proceeding and to other known producers or sellers is required by paragraph (d)(4)(iii). Because, however, the notice of initiation and consideration of revocation or termination provided for in paragraph (d)(3)(ii) need not be based on a request, we have added a new paragraph (d)(3)(ii), requiring actual notice if the consideration is not based on a request.

The purpose of paragraphs (d)(1) and (d)(2) is to permit the Secretary to...
In response to the comment on paragraph (f), the Commission may disclose such information only with the Department's permission. See the Department's response to comments on § 355.15(g).

Sec. 355.20(b)

Note: We have added a new paragraph (b) that would require the Department to hold a disclosure conference, if requested, after a final determination. This paragraph reflects the Department's current practice. We note that the purpose of any disclosure conference is only to provide an explanation of the calculation methodology used in a determination. See the Department's response to comments on § 355.15(h).

Sec. 355.21(c)

Comment: One party suggests that the phrase "any net subsidy" be changed to read "greater than de minimis net subsidies" to reflect the Department's practice. Another party agrees that the paragraph under § 355.14, which provides for exclusion of any party for which the Department calculated a de minimis net subsidy, but believes that de minimis should be defined as three percent or less.

Department's Position: The phrase "any net subsidy" means any subsidy greater than zero. A de minimis subsidy is considered a zero subsidy. Any party that receives a zero (including de minimis) subsidy would be excluded from the Department's order. See the Department's response to comments on § 355.14(c). The definition of de minimis was addressed in the rulemaking which culminated in publication of a final rule on de minimis dumping margins and countervailable subsidies at 52 FR 30660 (August 17, 1987). That rule is included in these regulations as § 355.7.

Paragraph (c), as proposed, only addressed exclusions based on requests submitted under § 355.14. We have modified this paragraph to clarify that any producer or exporter that did not request exclusion under § 355.14 and for which the Department nonetheless calculated a zero net subsidy will be excluded from the order. See the Department's response to comments on § 355.14(c).

Sec. 355.21(d)

Note: We have added a new paragraph (d) to implement the special rule of section 705(b)(2) of the Act, which generally limits assessment to future entries if the Commission's affirmative final determination finds threat of material injury or material retardation of the establishment of an industry. There is no corresponding provision in the existing regulations.

Sec. 355.22(a)

Comment: Comments focused on the timetables for requesting and conducting reviews and the requirements for requests for review, including the certification requirements.

The second comment proposed that foreign producers that are new entrants into the U.S. market after the investigation was completed should have the opportunity to request a review at any time after six months from the deadline for exclusion requests in the last segment of the proceeding. If it is determined that the new entrant received no countervailable benefits, the order would be revoked ab initio with regard to the products of that party.

Regarding the requirements for requests under paragraph (a)(1), one party states that individual importers, foreign producers, and exporters should not be allowed to request administrative reviews under this paragraph covering any imports or exports that do not directly affect their products. Another party, who assumes that the reference in paragraph (a)(1) to "interested party" means domestic interested party only, states that the Department should consider adding a requirement that the party requesting review act on behalf of an industry. Otherwise, one small domestic producer could keep the review process active indefinitely, without the support of the major part of the domestic industry.

Regarding paragraph (e)(2), one party considers the requirements contrary to both the purpose of section 751 of the Act, which is to provide for assessment and cash deposit based on the circumstances applicable to imports made during the review period, and the purpose of the amendments made by the 1984 Act, which provided for reviews on request but gave the Department no discretion to impose conditions on requests for review. This party suggests that in order to eliminate this and other conflicts with the Act, the Department should adopt as its final rule on administrative reviews the interim final rule that the Department published on August 13, 1985 (50 FR 32399).

Other parties suggest that we revise paragraph (a)(2) to permit requests for review whenever the importer, foreign producer, or exporter believes it could show that the amount of the net subsidy on entries covered by a review had been reduced substantially from the last established level. One party suggests that the Department might require an allegation of at least a 20 percent reduction, and other parties suggest an alleged reduction sufficient to entitle the requester to a company-specific rate rather than the country-wide rate.

Regarding the certifications described in paragraph (e)(2), the following comments were submitted:

Concerning subsidies received,
revoke an order in which the domestic industry is no longer interested. The Secretary cannot conclude that the domestic industry is no longer interested in an order if parties which account for a significant proportion of domestic production continue to favor maintenance of the order. On the other hand, an affirmative statement of no interest by parties representing a significant portion of domestic production is certainly an inducement to conduct a review and may indicate changed circumstances sufficient to warrant revocation or termination. The opposition of one or more domestic parties, including the petitioner, would be evaluated within the context of the continuing requirement that the order have the support of the industry. Of course, an interested party may request the Commission to conduct a changed circumstances review. Furthermore, if the domestic interested parties take conflicting positions, the Department may find that circumstances have not changed sufficiently to warrant revocation or termination. Paragraph (d)(4) is clear on its face that a request for revocation or termination based on changed circumstances may be submitted at any time.

Congress has recognized that the Department may revoke or terminate in the absence of domestic party interest in continuation of the order or suspended investigation. See H.R. Rep. No. 1156, 98th Cong., 2d Sess. 181 (1984). The so-called sunset provision is merely a means for ascertaining if interest in continuation exists. As to the suggestion that we extend the period for objecting to revocation, we can see no reason to do so. Such a one-month period is sufficient to decide if objection is warranted. Finally, if parties believe that five years is too long to wait for a revocation in accordance with the provisions of paragraph (d)(4), they may request revocation under the other provisions of § 355.25.

Sec. 355.25(e) Note: We have added clarifying language to paragraph (e) regarding a finding by the Commission on a suspension agreement which would result in termination of a suspended investigation.

Sec. 355.31(a) Comment: Twelve parties believe that the deadlines for submission of factual information are unreasonably short and inflexible. Most of these parties object to the proposed deadlines because they would preclude submission of factual information during verification, even though such information could be verified, or after verification, even though such information may rebut, clarify, or correct earlier submissions.

One party suggests that for both investigations and administrative reviews, the Department establish a deadline of 10 days subsequent to verification or 30 days prior to a final determination or final results of review for submission of factual information that is publicly available and verifiable by reference to "well recognized and respected sources." One party favors retention of the more discretionary guidelines in § 355.34(a)(1) of the existing regulations, which permit the Department to issue specific instructions regarding specific submissions and extend the deadline for submission when warranted. Several parties urge retention of the flexibility afforded by the existing regulation to extend established deadlines, whatever deadlines are included in the new regulations. One party suggests that the regulations be revised to permit the Department to accept at any time information that corrects or clarifies earlier submissions, as under current practice.

Seven parties focus specifically on the effect of the deadlines on the ability of petitioners to participate fully in proceedings. They emphasize that the deadlines in paragraph (a) are inappropriate for respondents but would make it impossible for petitioners to organize and to focus their investigative efforts on particular issues raised in respondents' submissions, because respondents' submissions are often made just prior to the deadline established in this paragraph. The effect of the deadlines would be to defeat the legislative intent to permit all interested parties a meaningful right to comment. It would also adversely affect the domestic industry's right to judicial review based on substantial evidence of record.

Two parties suggest that we permit submission of factual information by petitioners a reasonable period ("normally 14 days") ("not less than 30 days") after information submitted by respondents has been released to petitioners under administrative protective order. Another party suggests that the deadlines for respondent be one week before verification begins and, in an administrative review without verification, one week before the Department's preliminary determination. The domestic industry would have 10 days from the date it obtains all proprietary information under protective order (including the non-public version of the Department's verification report) in which to submit factual information and to comment. Another party suggests that domestic interested parties be given "ten days to two weeks" after the date all proprietary material becomes available under administrative protective order. One party believes the standard in paragraph (a)(2) should conform to § 355.38(b) and provide that the Department will consider factual information submitted after an applicable time limit if "sufficient time remains" to consider it. Other parties believe the Department should establish specific deadlines in each case, as under current practice.

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

The comments have not persuaded us that the time limits for submission of factual information by respondents (interested parties as defined in paragraphs (i)(1) or (i)(2) of § 355.2) are unfair or unreasonable. If the Department deems additional factual information to be critical to the investigation or review, the Department will request the information under § 355.31(b)(1). Such information might include information that to some extent clarifies or corrects earlier timely submissions and that could be, for example, requested orally at verification.

We do agree, however, that the proposed rule does not provide domestic interested parties (interested parties as defined in paragraphs (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2) an adequate opportunity to rebut, clarify, or correct earlier submissions of factual information by respondents. Accordingly, we have modified paragraph (a) of this section to provide a period of 10 days from the date such factual information is available to domestic interested parties for them to submit factual information that clarifies, rebuts, or corrects earlier submissions by respondents. The information is "available to a domestic interested party when it is either served on it or, if the information is business proprietary information that is not served directly on the domestic interested party, released to it under administrative protective order.
Although paragraph (a)(1)(i) of this section permits submission of factual information the day before the scheduled starting date of verification in an investigation, it is incumbent on parties and their counsel to provide such information before verification commences. Otherwise, the Department cannot verify the information and cannot use it, because section 776 of the Act precludes reliance on unverified information in making the final determination. It is therefore pointless to submit factual information before verification has technically begun but after the verifier can use it.

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

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

Sec. 355.31(b)

Comment: One party suggests that the last sentence of paragraph (b)(2) should read: "The Secretary will consider unsolicited questionnaire responses. See 50 FR 24214 (1985). The Department normally includes in its investigation foreign producers and exporters accounting for most of the imports of the merchandise. In addition, a party may request exclusion from an investigation under § 355.14 or revocation under § 355.25, as appropriate. In unusual circumstances, paragraph (b)(2) permits the Department to consider unsolicited questionnaire responses. We note that we have added a sentence to paragraph (b)(2) to clarify that untimely or unsolicited questionnaire responses rejected by the Department will be returned to the submitter with written notice specifying the reasons why the Department rejected the request for reconsideration. Requests for extension must be approved in writing, as provided in paragraph (b)(3), in order to avoid confusion and ensure fair and equitable treatment for all parties. If the designated official is not available to act on a request, the official will have designated someone else to act in the official's absence.

The first sentence of paragraph (b)(3) emphasizes the fact that an extension of time for submitting a questionnaire response is difficult to obtain. The Department will judge each request on its own merits and grant requests when the requester can establish a legitimate need for additional time.

Sec. 355.31(c)

Comment: Seven parties comment that the deadline in paragraph (c)(1) for submission of allegations of subsidies is unreasonably short. One of these parties states that Congress did not include any time limit in section 775 of the Act and recognized the importance of having the Department examine all potential subsidies, subject only to the caveat that examination of allegations of additional subsidy practices not delay the investigation more than absolutely necessary. S. Rep. No. 249, 96th Cong., 1st Sess. 98 (1979). Moreover, in practice, the Department has identified potential subsidies during and even after verification without delaying the investigation. If the petitioner identifies a new subsidy after analyzing the respondents' submissions and the Department's verification report, that subsidy should be included in the investigation.

The time limit for submission of additional allegations is intended to ensure that the Department is informed of any allegation that it must include in its investigation or review sufficiently early in the proceeding for it to obtain information, conduct verification, and issue its preliminary and final determinations and results on the additional allegations. A party may request an extension of the time limit as provided in paragraph (c)(3). Moreover, even after the time limit stated in this paragraph has passed, the Department, under § 355.39(a), would include in its investigation or review any newly discovered practice that appears to provide a subsidy, provided that sufficient time remains before the scheduled date of the final determination or final results of review.

In practice the Department has identified and included in an investigation new subsidies discovered at verification. See, e.g., Certain Atlantic Groundfish from Canada, 51 FR 10011, 10050 (1986).

Submitters should note that the adequacy of new allegations, including upstream subsidy allegations, would be judged by the same standard as would have applied if the allegations had been contained in the petition.

We agree that the time limit may be unnecessarily short in investigations in which the Department has extended the scheduled date of its preliminary determination. If the preliminary determination in an investigation is extended under § 355.15 (b) or (c), the time limit for submission of new allegations also could be extended without causing any additional delay in the investigation. Accordingly, we are modifying § 355.32(c)(1)(i) to read, "In an investigation, [not later than] 40 days prior to the scheduled date of the Department's preliminary determination."

This new deadline is approximately 20
Although paragraph (a)(1)(i) of this section permits submission of factual information the day before the scheduled starting date of verification in an investigation, it is incumbent on parties and their counsel to provide such information before verification commences. Otherwise, the Department cannot verify the information and cannot use it, because section 776 of the Act precludes reliance on unverified information in making the final determination. It is therefore pointless to submit factual information before verification has technically begun but after the verifier can use it.

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

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

Sec. 355.31(b)

Comment: One party suggests that the last sentence of paragraph (b)(2) should read: "The Secretary will consider unsolicited questionnaire responses if submitted on or before the due date of solicited responses." In this way, all producers would have an opportunity to have the Department include them in the investigation and, if appropriate, calculate for them an individual rate.

Another party contends that paragraph (b)(3) should be revised to permit requests for extension to be submitted and approved orally and thereafter confirmed by written notice in the public record. The written request requirement is unnecessary and may prove unadministrable as a result of unforeseeable contingencies. Moreover, the approving officials should not be limited by regulation, because the designated officials may be unavailable due to other obligations.

One party believes that under paragraph (b)(3) the Department should provide that each request will be judged on its own merits. It is inappropriate to provide that requests for extension ordinarily will not be granted, because the need for additional time may be legitimate.

Department's Position: As explained in the preamble to the proposed rule, the short statutory time limits and the complexity of countervailing duty proceedings, including verification requirements, makes it impossible for the Department to consider unsolicited questionnaire responses. See 50 FR 24214 (1985). The Department normally includes in its investigation foreign producers and exporters accounting for most of the exports of the merchandise. In addition, a party may request exclusion from an investigation under §355.14 or revocation under §355.25, as appropriate. In unusual circumstances, paragraph (b)(2) permits the Department to consider unsolicited questionnaire responses. We note that we have added a sentence to paragraph (b)(2) to clarify that untimely or unsolicited questionnaire responses rejected by the Department will be returned to the submitter with written notice specifying the reasons why the Department rejected the request.

Requests for extension must be approved in writing, as provided in paragraph (b)(3), in order to avoid confusion and ensure fair and equitable treatment for all parties. If the designated official is not available to act on a request, the official will have designated someone else to act in the official's absence.

The first sentence of paragraph (b)(3) emphasizes the fact that an extension of time for submitting a questionnaire response is difficult to obtain. The Department will judge each request on its own merits and grant requests when the requester can establish a legitimate need for additional time.

Sec. 355.31(c)

Comment: Seven parties comment that the deadline in paragraph (c)(1) for submission of allegations of subsidies is unreasonably short. One of these parties states that Congress did not include any time limit in section 775 of the Act and recognized the importance of having the Department examine all potential subsidies, subject only to the caveat that examination of allegations of additional subsidy practices not delay the investigation more than absolutely necessary. S. Rep. No. 249, 98th Cong., 1st Sess. 98 (1979). Moreover, in practice, the Department has identified potential subsidies during and even after verification without delaying the investigation. If the petitioner identifies a new subsidy after analyzing the respondents' submissions and the Department's verification report, that subsidy should be included in the investigation.

One party would delete paragraph (c)(1) and provide instead a general rule that the Department will consider factual information, including new subsidy allegations, submitted within a reasonable time period. Another party would add to paragraph (c) the provision in §355.39(b)(2) regarding deferral of consideration until the next administrative review.

Regarding paragraph (c)(2), one party suggests that the Department should consider during an investigation an allegation that petitioner no longer has standing whenever there is evidence to support such an allegation.

Department's Position: The time limit for submission of additional allegations of subsidies is intended to ensure that the Department is informed of any allegation that it must include in its investigation or review sufficiently early in the proceeding for it to obtain information, conduct verification, and issue its preliminary and final determinations and results on the additional allegations. A party may request an extension of the time limit, as provided in paragraph (c)(3). Moreover, even after the time limit stated in this paragraph has passed, the Department, under §355.39(a), would include in its investigation or review any newly discovered practice that appears to provide a subsidy, provided that sufficient time remains before the scheduled date of the final determination or final results of review. In practice the Department has identified and included in an investigation new subsidies discovered at verification. See, e.g., Certain Atlantic Groundfish from Canada, 51 FR 10011, 10050 (1986).

Submitters should note that the adequacy of new allegations, including upstream subsidy allegations, would be judged by the same standard as would have applied if the allegations had been contained in the petition.

We agree that the time limit may be unnecessarily short in investigations in which the Department has extended the scheduled date of its preliminary determination. If the preliminary determination in an investigation is extended under §355.15 (b) or (c), the time limit for submission of new allegations also could be extended without causing any additional delay in the investigation. Accordingly, we are modifying §355.32(c)(1)(i) to read, "In an investigation, [not later than] 40 days prior to the scheduled date of the Secretary's preliminary determination," This new deadline is approximately 20
Comment: Two parties urge the Department to make the summarization requirements more specific in order to make the summaries of factual information more useful for the personnel of client organizations or firms who do not have access to the business proprietary information. They suggest that the regulation require all numeric information to be summarized within 10 percent of the actual figure, except that columns of numbers one page or more in length may be indexed by page within a range of 10 percent of the average for the page. In addition, one of these parties would require that the text of any business proprietary financial statement be summarized (rather than deleted), unless the submitter supports a claim that the text cannot be summarized adequately. Furthermore, that party would require a submitter to characterize the type of customer, supplier, or distributor, the name of which is deleted as proprietary information, unless the submitter supports a claim that to do so would reveal the business proprietary information.

On the other hand, four parties suggest modifications that would make paragraph (b) less burdensome to the submitter. One of these parties urges the Department to clarify that the reference to "an individual portion" of data means an entire request (such as all sales listings) rather than a smaller segment of the submission. Two of these parties suggested that the Department delete the reference to ranging within 10 percent of the actual figure because, especially when the actual figure is small, the ranging may not sufficiently mask the proprietary information. For voluminous data, one party suggests that the submitter be permitted to summarize a representative sample. Two of the four parties would modify the regulation to require a detailed nonproprietary summary only when domestic interested parties have established a particular need for such a detailed summary. If the Department retains the proposed rule without modifying it, one of these parties urges the Department to allow the submitter a period of 10 days after submission of the proprietary information in which to provide a detailed nonproprietary summary.

Department's Position: As amended by the 1984 Act, section 7717(c)(1) of the Act requires either a nonproprietary summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in conflicts of interest involving which a summary is not feasible, or we explained in the preamble to the proposed rule, the "brief" nonproprietary summary permitted by the existing rule is not consistent with the Act as amended.

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

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

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

Sec. 355.32(c)

Comment: Two parties suggest that ordinarily the Department should be required to release under protective order (subject to the right to withdraw the information) all proprietary information except (1) customer names, (2) identification of sources of information regarding the operation of a foreign interested party, and (3) information submitted by a domestic interested party that is not relied on by the Department in making its determination. By drafting this policy in the regulations, the Department could limit the number and scope of objections to releasing information submitted by a protective order. Another party states that a "brief" nonproprietary summary should be permitted with reference to an approach which our experience shows has been adequate in the past in many situations to meet the statutory purpose. The Department should modify the last sentence of this paragraph accordingly.

Department's Position: Although the Department has made its practice known in numerous instances, it is not an appropriate subject for rulemaking. In practice, the Department has not released information which identifies specific customers (such as customer names or codes) or which identifies the specific sources of information regarding the operation of a foreign interested party (such as the sources of information in market research surveys), and other especially sensitive information (such as secret production formulas). However, the Department in each case balanced the need for disclosure against the need of the submitter to protect the information from the possibility of inadvertent disclosure. See, e.g., Monsanto Industrial Chemical Co. V. United States, 6 CIT 241 (1980). For this reason, we are not prepared to state that we will not ordinarily release any other data under APO. Practitioners are advised, however, that we will look very carefully at requests for nonrelease of data that do not fall into the categories listed above.

It is unnecessary to provide in the regulation an additional opportunity for argument in opposition to release of submitted information under protective order. Our experience has been that the submitter almost always is aware of the arguments at the time the information is submitted. Therefore, the submitter is capable of presenting arguments against disclosure at that time. Moreover, this requirement is essential to avoid unnecessary delay in release of such information which in the past has resulted from repetitive submissions supporting and opposing release. Only in the most extraordinary situation would we make an exception to this rule and provide the submitter an additional opportunity for comment. As drafted, the last sentence of this paragraph adequately covers such an exception.

Sec. 355.32(d)

Comment: Three parties contend that 48 hours is too short a period in which to rebut arguments in favor of disclosure after the Department receives such arguments. The Department should modify the last sentence of this paragraph accordingly.

Department's Position: Although the Department has made its practice known in numerous instances, it is not an appropriate subject for rulemaking. In practice, the Department has not released information which identifies specific customers (such as customer names or codes) or which identifies the specific sources of information regarding the operation of a foreign interested party (such as the sources of information in market research surveys), and other especially sensitive information (such as secret production formulas). However, the Department in each case balanced the need for disclosure against the need of the submitter to protect the information from the possibility of inadvertent disclosure. See, e.g., Monsanto Industrial Chemical Co. V. United States, 6 CIT 241 (1980). For this reason, we are not prepared to state that we will not ordinarily release any other data under APO. Practitioners are advised, however, that we will look very carefully at requests for nonrelease of data that do not fall into the categories listed above.

It is unnecessary to provide in the regulation an additional opportunity for argument in opposition to release of submitted information under protective order. Our experience has been that the submitter almost always is aware of the arguments at the time the information is submitted. Therefore, the submitter is capable of presenting arguments against disclosure at that time. Moreover, this requirement is essential to avoid unnecessary delay in release of such information which in the past has resulted from repetitive submissions supporting and opposing release. Only in the most extraordinary situation would we make an exception to this rule and provide the submitter an additional opportunity for comment. As drafted, the last sentence of this paragraph adequately covers such an exception.
days after the date of publication of the notice of initiation in a normal investigation and 110 days after that date in an investigation extended under § 355.15(b) or (c).

Any party that is precluded by the time limit in paragraph (e)(1) from raising an additional subsidy allegation in an investigation or administrative review may request a review during the first or following anniversary month, as provided in section 353.22, to include that alleged subsidy.

Regarding the time limit on allegations of petitioner's lack of standing, the Department must ensure that the allegation is submitted sufficiently early in the proceeding to permit adequate investigation of the allegation. As stated in the preamble to the proposed rule, "[standing is important; however, it is also complex and the Department needs time to gather and evaluate the facts."

50 FR 24214 (June 10, 1985).

The Department believes the time limit is reasonable based on its experience in dealing with such allegations. See, e.g., Certain Atlantic Groundfish from Canada, 51 FR 10041, 10043 (1986).

Sec. 355.31(e)

Comment: One party states that the Department should not reject a submission which substantially conforms to the requirements stated in paragraphs (e)(1) and (e)(2), and that the regulation should provide an automatic right for a party to resubmit a document in acceptable form when the initial submission was unsatisfactory solely because it failed to comply with the requirements set forth in these paragraphs.

Regarding paragraph (e)(3), one party believes that a time or expense, rather than time and expense, standard would be preferable. Another party would add a statement that, absent clear evidence to the contrary, the Department will accept a submitter's representation that it would be unable to submit a computer tape without unreasonable additional burden in time and expense. Another party would delete this paragraph, because the requirement is unnecessary for the types of information normally requested in countervailing duty investigations.

Department's Position: Although paragraph (e)(4) gives the Department the authority in specific situations to alter the time and expense requirements of paragraph (e)(3), the Department believes it is important that such rules be clear. The submitter has been able to process documents quickly so that deadlines can be met. Proprietary information must be submitted in a manner and time appropriate given the nature of the information and the Department's response to comments on § 355.15(g)(1).

In order to improve the speed and efficiency of document handling, the Department is revising paragraph (e): (1) increase from five to seven the number of copies of a document required in an administrative review; (2) specify that documents shall be single-sided; (3) require a statement that the document may or may not be released under administrative protective order; and (4) require that each computer tape submitted be accompanied by a printout of the tape's contents.

We believe the proposed time and expense standard for paragraph (e)(2) is appropriate based on the Department's response to comments on § 355.15(g)(1). We note that we have added paragraph (i) to the final rule a certification requirement will help to ensure the completeness and accuracy of factual submissions.

Sec. 355.32(a)

Comment: One party recommends that we delete the requirement in paragraph (a)(2) that the submitter explain why each piece of factual information is proprietary. Because section 777(b)(2) of the Act requires an explanation of reasons for the designation only when the Department determines that such designation is "unwarranted," we should revise paragraph (a)(2) to require an explanation only for information outside the scope of § 355.31(f)(1), which describes information that the Department normally considers proprietary. Given the time constraints placed on submission of factual information, the rule as drafted is unduly burdensome.

Department's Position: For information that falls within § 355.31(f)(1), the Department will expect only that the submitter will specify how the information is within § 355.31(f)(1).
information to consultants, the Department in effect is admitting its own inability to develop an adequate record. The proceeding becomes adjudicatory in nature, but the procedural safeguards of the Administrative Procedure Act do not apply. Administrative law states that because the legislative history of section 777 of the Act generally limits disclosure only to attorneys, the regulation goes too far. Release to consultants and non-attorney representatives should be the “rare exception,” and the regulation should define the special circumstances under which such release might occur.

Two parties are concerned that release to consultants and in-house counsel may increase the risk of inadvertent disclosure. Another party believes that disclosure to economic consultants is inappropriate; because consultants are not subject to the same ethical standards as attorneys and are not subject to disbarment. Moreover, release to consultants makes the Department’s balancing of competing interests ineffective because of the high risk that unauthorized disclosure may occur without the knowledge of the attorney responsible. Regarding release to in-house counsel, one of these parties suggests that the Department adopt the following guidelines: (1) no release to in-house counsel who also play a managerial role in the company; (2) no release to in-house counsel in proceedings in which the interested party is also represented by outside counsel; and (3) in-house counsel are permitted to examine proprietary order material only at the Department or another location not belonging to the company. Another party suggests that the Department provide more specific rules for release to parties not represented by counsel and to parties represented by in-house counsel.

The preamble to the proposed rule states that the Department will not release proprietary information after it makes a judicially reviewable determination “because the need to prepare for judicial review is not an adequate reason for additional disclosure.” One party argues that if the Department refuses to disclose final calculations (whether before or after a final determination), the domestic interested parties cannot identify clerical errors in the determination. Because the Department has inherent authority to correct its own clerical errors, disclosure of final calculations under protective order would assist the Department within the parameters of its authority to discover and correct these errors.

**Department’s Position:** Paragraph (b) of this section clearly indicates that a protective order application, if granted, would entitle the applicant to receive proprietary information not yet submitted to the Department at the time the application is filed with the Department.

Approval of release of information in advance of its submission does not impede the Department’s ability to balance the competing interests of submitter and requester. The types of information submitted in countervailing duty proceedings are well-known to all parties in advance of submission. See, e.g., § 355.4. The existence of an adequate public summary does not affect the balancing test or a party’s representative’s right to access under protective order to the proprietary information. The summary is for the benefit of those who do not have access to the proprietary information. The protective order is intended to maximize access to proprietary information for the purpose of permitting interested parties to contribute to the objectives of the proceeding. See S. Rep. No. 249, 96th Cong., 1st Sess. 100 (1979). Paragraph (a) identifies the factors that make up the Department’s balancing of competing interests; the specifics depend on the facts of an individual case, and it would be futile to attempt to spell these out in this general description of the balancing factors.

Use of the phrase “proprietary information” in this section clearly indicates that an application covers, at the election of the applicant, any factual information submitted to or obtained by the Department which the Department considers confidential and which is part of the record of the proceeding. See §§ 355.3(a), 355.4(b), and 355.32. In practice, the Department releases under protective order its verification reports which contain such information. Whether it would also release an internal memorandum containing such information would depend on the nature and contents of the memorandum. The Department, for example, would not normally release a pre-decisional memorandum because it contains some proprietary information extracted from a respondent’s submission of factual information. The Department makes every effort to expedite its decisions on release of information. Normally the decision is made within 14 days of receipt of the application. However, in proceedings involving, for example, a large volume of different types of information or complex issues relevant to the balancing test described in paragraph (a), the Department may need some additional time. We have modified paragraph (b) to indicate that the normal time period for the Department’s decision is not more than 14 days. This is reflected in section 1332 of the 1988 Act; we are drafting revised regulations to incorporate this statutory requirement.

Regarding service of proprietary information subject to protective order, we are modifying paragraph (a) to indicate that the Department may require direct service of the proprietary information on the recipient of the protective order, subject to the Secretary's right to require service in a manner other than this. The Department normally would require direct service when the party has agreed in advance, under § 355.32(c), to release such information under protective order.

Release to consultants and other non-attorney representatives does not change the character of the countervailing duty proceeding from fact finding to adjudication. The Department’s routine releases to consultants and non-attorney representatives do not protect the Department’s information from disclosure, and the Department’s rule adopts the Department’s current practice of releasing the first sentence of the protective order application, if granted, to consultants and other non-attorney representatives. The Act does not empower any interested party to conduct independent investigations or develop a separate record for judicial review. The Department releases proprietary information under protective order to consultants and non-attorney representatives when it concludes that there is sufficient evidence of a particular need for the individual’s expertise in analyzing the information on behalf of a party to the proceeding, and only when the Department is satisfied that the information will be protected from unauthorized disclosure. Consistent with the legislative history of section 777 of the Act, the Department “generally” releases information under administrative protective order “only to individuals who are subject to disbarment from practice before the agency in the event of a violation of the order.” S. Rep. No. 249, 96th Cong., 1st Sess. 101 (1979). When the Department releases information under administrative protective order to consultants and other non-attorney representatives, these individuals are subject to the same sanctions as are attorneys for any violation of the order. See the Department’s final rule entitled “Procedures for Imposing Sanctions for Violation of an Antidumping or Countervailing Duty Protective Order,” 58 FR 47206, November 16, 1993. In conducting the balancing test described in paragraph (a), the...
information released under protective order. The protective order itself would identify each individual authorized access, either by name or by reference to the section of the application (Form ITA-367) which lists the names of authorized support staff.

Sec. 355.53

Comment: One party suggests that the Department list in this section the types of proprietary information that will not be disclosed under administrative protective order, including customer names, verification exhibits, and trade secrets. Two parties suggest that the Department modify this section to indicate that information and documentation obtained during verification will be released in accordance with § 355.34. One party suggests that we include a provision stating that proprietary information which the Department obtains from the Commission may be released only by the Commission, not the Department.

Department's Position: See the Department's position on § 355.32(c) for the types of information which ordinarily will be released, or not released, under protective order. The comments are inappropriate, because this section deals with nonrelease of privileged and classified information, as those terms are defined in § 355.4 (c) and (d) of these regulations. "Privileged" information includes information protected by Executive Privilege. Similarly, information which the Commission may be disclosed to interested parties by the Commission (not by the Department), but this information is not necessarily "exempt" from disclosure.

Sec. 355.34

Note: The following comment was submitted in response to the proposed rule on procedures for imposing sanctions for violation of an antidumping or countervailing duty protective order.

Comment: One party suggests that all counsel in a proceeding be covered by a single, blanket administrative protective order. This approach would limit the number of respondents, eliminate the need for multiple source information to be released, and would reduce the risk of inadvertent disclosure. A single blanket administrative protective order would permit counsel to other representatives to have access to the information that is not essential, and may be irrelevant, to the representation of their clients. It also unnecessarily increases the risk of inadvertent disclosure.

Sec. 355.34(e)

Comment: One party believes that the Department should modify this paragraph to clarify that one protective order applies as a continuing application during the investigation or administrative review, and that the order covers release of all the nonproprietary information submitted by parties to the proceeding as well as that submitted into the record by the Department in the form of verification reports and other memoranda. On the other hand, another party argues that by requiring a decision on release before submission of this information, the proposed rule prevents the Department from conducting the balancing test described in this paragraph. The Department cannot balance the competing interests without knowing why the requester believes the nonproprietary summaries are inadequate for the requester's purposes and without knowing what information is submitted. One party suggests more generally that the regulation should describe the Department's method of balancing competing interests.

Several parties would expedite release of information by changing the Department rule on the "blanket" application within a short time (specified in the regulation) after it is filed, and by providing in the regulation that the party submitting proprietary information subject to the protective order must serve the information on the protective order recipient either at the same time or within 24 hours after submission to the Department. One of these parties would also have the Department serve within 24 hours on the protective order recipient all business proprietary information which the Department must have in the record of the proceeding. However, another party would limit the direct service requirement to proprietary information which the submitting party agrees in light of the "blanket" protective order should
Department gives special consideration to the situation of in-house counsel and the possibility of inadvertent disclosure. For example, we do not permit disclosure to any in-house counsel who is also an officer of the company that is a party to the proceeding. The Department has the policy for evaluating competing interests in requests for disclosure to in-house counsel, consultants, and other non-attorney representatives has developed in the context of specific proceedings. Given the fact that we still have relatively little experience with requests for access to such persons, we do not believe that this is an appropriate subject for rulemaking at this time.

Regarding disclosure of the Department’s calculations after issuing its final determination, the Department has provided for such disclosure in the context of specific proceedings (published at 53 FR 41617 (October 24, 1988)) and in paragraph 355.20(b) of these regulations.

Sec. 355.34(b)

Comment: One party wonders if the Department has authority to deny a request for disclosure submitted later than the time limits specified in paragraph (b)(1). Another party sees no valid reason for the short time limits. For example, although a party may at first choose not to participate actively in a proceeding, the party may decide later in the proceeding to participate actively end, therefore, to request access to information under protective order. The Department should consider requests for release of information even if submitted later than the time limits specified in paragraph (b).

Regarding paragraph (b)(2), one party suggests that the regulation specify that submission of five copies of the request is sufficient, rather than the 10 copies required by § 355.31(e). Another party asks that we delete the standard form requirement, because it ignores the possibility that special circumstances may justify deviation from the standard form.

Regarding paragraph (b)(3), one party suggests that we allow disclosure to anyone authorized by the submitter in writing or otherwise authorized by law. Another party questions the regulation in paragraph (b)(3)(ii) that released information be used "solely for the segment of the proceeding then in progress." When the purpose of protecting the information is accomplished, the person having access to the information should be permitted to use it, on behalf of the same client, in another investigation in which the information is relevant.

Regarding paragraph (b)(4), one party suggests that the proposed rule be modified to ensure that "the taint of a person who violates a protective order" does not affect that person's firm, partners, representatives, and employer after that person is no longer employed or associated, and likewise does not affect the new firm or employer of that person. Another party disagrees with the requirement (stated in the preamble to the proposed rule) that the party’s attorney (and the law firm) take responsibility for violation of a protective order by consultants assisting the attorney. This party believes that the sanctions listed would apply with the same effect to consultants and that the person committing the violation should be held responsible. There should be no distinction between consultants who work with attorneys and those who do not.

One party would add a new paragraph (b)(5) requiring the Department to inform the requester within 10 days of submission whether the request satisfies the requirements of paragraph (b). If not, the Department will explain the deficiencies and permit the requester to resubmit the request within five days.

Department’s Position. Time limits for requesting disclosure of information under administrative protective order are necessary to eliminate the possibility that the Department will receive a request too late in the proceeding to process it in time to ensure timely disclosure of information. The time limits are also intended to eliminate the administrative burden of processing requests from the same person and to encourage the filing of requests that cover information not yet submitted in the proceeding. See H.R. Rep. No. 725, 98th Cong., 2d Sess. 44-45 (1984). Because the application may be submitted in advance of submission of the information, there is no reason for a party that may want to participate in a proceeding to delay submitting the requests. On the other hand, submission of the application for disclosure does not obligate a party to participate actively in the proceeding. We do agree, however, that the time limits in the proposed rule may be shorter than necessary for the intended purpose. Accordingly, we are modifying paragraph (b) to provide that requests for disclosure be submitted not later than 30 days after the date the notice of initiation is published in the Federal Register (rather than 10 days as provided in the proposed rule) or, if later, 10 days after the date the representative’s client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under § 355.58, are due. The time limits are reasonable and consistent with the purpose of the Act.

The standard form requirement reduces significantly the administrative burden of reviewing requests for consistency with the law. It also simplifies the process for the requester. The standard form covers "special situations" such as in-house counsel and non-attorney representatives. The requirement is designed to reflect the Department's need in many cases, and is consistent with the general filing requirements in § 355.31(e).

Section 355.32(f) lists all parties to whom the Secretary may disclose information under protective order, including the party's representative, i.e., the person who violates a protective order in no event later than the date the case briefs. Because the application may be submitted in advance of filing requirements in § 355.31(e).

Section 355.32(f) lists all parties to whom the Secretary may disclose information under protective order, including the party's representative, i.e., the person who violates a protective order in no event later than the date the case briefs. Because the application may be submitted in advance of filing requirements in § 355.31(e).
review. These dangers are not warranted by the potential benefits identified in the comment. Our experience has been that parties can raise issues in a review without resorting to use of proprietary information in another segment of the proceeding. Furthermore, the Department is aware of the information contained in its own files and, in its discretion, draws upon essential information in order to fulfill its investigative duties. Finally, this limitation also maintains the statutory scheme of segmented proceedings, each with a separate administrative record for judicial review.

We have modified paragraph (b)(4) to reference the sanctions listed in § 354.3 of the Department's final rule entitled "Procedures for Imposing Sanctions for Violation of an Antidumping or Countervailing Duty Protective Order," 53 FR 47916 (November 28, 1988). The sanctions are necessary and appropriate for ensuring the effectiveness of the Department's protective orders. Under the proposed rules, the person who violates a protective order held responsible, be it an attorney or other professional representative. Holding the employer, partner, and others in the firm or company responsible to the extent of disbarring the firm or company from practice before the Department is consistent with the need for strict compliance with the terms of protective orders, although that sanction would be exceedingly rare and would be appropriate only when the firm's actions, practices, or policies have contributed to the violation. Section 354.3 gives the decisionmaker a broad range of sanctions for any violation of an administrative protective order until they no longer have the opportunity to intervene in the judicial proceeding.

With regard to the last comment, the Department notifies the requester promptly of any deficiencies in the request. This practice has worked well, and deficiencies are quickly corrected.

We have changed paragraph (b)(3)(ii) to refer to the "segment of the proceeding in which the information was submitted" instead of "the segment of the proceeding then in progress" to allow for the possibility that segments may occur simultaneously.

Sec. 355.34(c)

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

One party suggests that paragraph (c) be revised to include a 5-day time limit for the Department's decision to release submitted information over the objection of the submitter, as well as the 24-hour time limit for withdrawal of the submitted information.

Department's Position: Because the submitter of proprietary information can and should anticipate that disclosure under protective order is possible, the submitter should also anticipate having to decide whether or not to withdraw the information submitted. Nonetheless, we have modified the time limit to two business days in order to ensure that all parties have an opportunity to consider withdrawing after the Department makes its decision to disclose the information. Five days for this purpose would unnecessarily delay disclosure. Regarding a time limit for the Department to make its decision on the request for disclosure in spite of objection by the submitter of the information, see the Department's position on § 355.34(a).

Sec. 355.34(d) and (e)

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

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

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

We have modified this paragraph to provide that alleged violations of protective orders will be handled under the procedures of Part 354 of this title. See the Department's final rule entitled "Procedures for Imposing Sanctions for Violation of an Antidumping or Countervailing Duty Protective Order," 53 FR 47916 (November 28, 1988).

Sec. 355.35

Comment: One party suggests that we should define "factual information." Another party contends that, in order to conform to the Congressional intent that all parties to the proceeding be "fully aware" of representations to the Department at ex parte meetings (H.R. Rep. No. 317, 98th Cong., 1st Sess. 77 (1983)), this section requires the memorandum of the ex parte meeting to report all legal arguments and nonfactual representations.

Department's Position: "Factual information" is defined in § 355.2(a)(1) of the regulation. This section conforms to the requirements of section 777(a)(3) of the Act, and is consistent with the cited legislative history of that section of the Act.

Sec. 355.36(a)

Note.—In order to conform the numbering of Subpart C to that under the proposed antidumping regulations, we have moved §§ 355.36 to 355.39 in the final rule. Correspondingly, we have renumbered §§ 355.37, 355.38, and 355.39 so that in the final rule they are numbered as §§ 355.34, 355.37, and 355.38, respectively.

Comment: Two parties contend that paragraph [a][1][iv][B] violates section 776(b) of the Act by requiring verification on request during an administrative review when the Department has conducted no verification "during either of the two immediately preceding administrative reviews." They contend that section 776(b) requires verification (on request) unless the Department has conducted a verification during both of the two previous consecutive reviews. Moreover, the House Report accompanying the 1984 Act specifies that verification would be required "after recent verifications have taken place . * * * H.R. Rep. No. 725, 98th Cong., 2d Sess. 43 (1984). (Emphasis added.)

Four parties contend that there is no statutory authority for the sampling procedure described in paragraph [a][2]. They believe the sampling authority in section 777A of the Act is limited to the use of sampling in analysis of sales and
price information, and does not cover sampling in selection of respondents for questionnaire responses or verification. One of these parties suggests that verification samples should be allowed only with the petitioner’s concurrence. Another believes that the regulation should permit sampling only if both the party requesting the verification and other domestic interested parties to the proceeding agree to sample. Others argue that it would be unreasonable to apply the results of one company’s verification to other companies whose submissions have not been verified. One of these parties contends that to do so would violate the requirements in section 776(c) of the Act for use of best information available, because there would be no evidence that parties not included in the sample have been uncooperative. Moreover, because the Department cannot levy a countervailing duty on a respondent that has not verified “in the two immediately preceding reviews” of the same one, the statute permits the Department to verify any administrative review for good cause.

Department’s Position: Section 776(b) of the Act requires the Department to conduct a verification, upon request, if no verification was conducted “during the immediately preceding reviews” of the same product. In addition, the statute permits the Department to verify any administrative review for good cause. The legislative history expands upon the statutory directive, stating that the Department need not conduct a verification of the third administrative review if it has verified “in the two immediately previous [administrative] reviews” of that order or finding. H.R. Rep. No. 725, 98th Cong., 2d Sess. 43 (1984). This means that the Department only is required to conduct a verification upon request in the third review if there were no verification in the first or second review. This interpretation is consistent with the further admonishment in the legislative history that the purpose of the amendment was to eliminate “an unnecessary administrative burden on the Department of Commerce” and “perfunctory verifications.” Id. The amendments implicitly overruled Altech Specialty Steel Corp. v. United States, 6 CIT 243 (1983), aff’d, 745 F.2d 632 (Fed. Cir. 1984), which held that the Department must conduct a verification of each respondent in each administrative review. The legislative history also states that the amendment “generally codifies the current administrative practice of the Department of Commerce,” which was to verify information in administrative reviews when the Department believed there was good cause for verification. H.R. Conf. Rep. No. 1156, 98th Cong., 2d Sess. 177 (1984). Regarding the Department’s practice, see Stainless Steel Wire Rods from France, 48 FR 2808-09 (1983). In view of the language of section 776(b) and the legislative purpose, paragraph (a)(1)(iv)(B) of the proposed rule is a reasonable interpretation of section 776(b) of the Act. Unless the Department “decides that good cause for verification exists” ($355.36(a)(1)(iii)) there is no need for verification in more than one out of three consecutive administrative reviews.

Regarding the authority to use sampling in selecting respondents that will receive questionnaires or in conducting verifications in administrative reviews of countervailing duty orders, section 777A of the Act states that the Department may use generally recognized sampling techniques “for the purpose of carrying out [administrative] reviews under section 751.” The Conference Report on the 1984 Act specifically describes the provision as expanding “the instances in which the administering authority may use sampling and averaging techniques * * * in carrying out [administrative] reviews of outstanding AD or CVD [sic] orders under section 751 * * *.” H.R. Conf. Rep. No. 1158, 98th Cong., 2d Sess. 166 (1984). The only qualification in section 777A is that “a significant volume of sales is involved or a significant number of adjustments to prices is required.” Under the circumstances described in § 355.36(a)(2), this qualification is satisfied.

Section 777A(b) specifically provides that the Department has exclusive authority to select “appropriate” samples and averages (whether of respondents or of programs) that are “representative of the transactions under investigation.” Because the provisions of this section are independent of the authority in section 776(c) for use of best information available, there is no requirement that the Department establish that the parties not included in the sample have been uncooperative. As to the comments that it is unreasonable to apply the results of one company’s verification to another, the commenters either misunderstand the concept of sampling or are criticizing the inclusion in the statute of the Department’s authority to sample.

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

Sec. 355.36(b)

Comment: Two parties urge the Department to provide in the regulation for advance notice of verification schedules and outlines, and an opportunity for interested parties to comment. One of these parties suggests a two-day comment period prior to verification.

Department’s Position: The Department prepares verification outlines as far in advance of the scheduled dates for verification as possible. Normally all parties to the proceeding have an opportunity to submit comments and suggestions. This practice has worked well and there is no reason to define the practice or time limits in the regulation. Verification schedules are frequently subject to modification in the event of unforeseeable circumstances. Such administrative matters are appropriately matters of agency discretion.

Sec. 355.36(c)

Comment: Regarding verification procedures, one party believes we should modify paragraph (c) to indicate that the Department will verify the completeness as well as the accuracy of submissions.

Several parties suggest that we add to the regulation a statement of procedures for issuing verification reports and receiving comments on the reports. Two parties recommend that the regulation require the Department to issue its report within 14 days, and one party recommends seven days, after verification. One party suggests that the proprietary version of the report include all proprietary exhibits on which it is based. The commenters believe that the questionnaire but not received until verification. The public version of the report should include all exhibits that are not proprietary. The regulation should provide 10 days for comment after receipt of the report.

One party would modify paragraph (c) to state that “whenver feasible, verification will take place prior to a preliminary determination.”

Department’s Position: Section 776(b) of the Act states that “[i]f the administering authority is unable to verify the accuracy of the information submitted, it will use the best information available * * * (emphasis added). In practice, the Department verifies the completeness of information submitted, because completeness is one indication of accuracy. We have modified paragraph (c) to reflect this practice. See also § 355.37(a)(2).
The Department places the highest priority on prompt preparation and release of verification reports. However, if the inability to verify the information submitted is due to the fault of the respondent, the Department should be required to notify respondents of deficiencies in their submissions and allow them to correct or supplement their incomplete or inaccurate data.

**Department's Position:** Verification is designed to establish the accuracy and completeness of a questionnaire response. If either of those factors cannot be established, regardless of "fault," the Department must, under the statute, adopt the best information otherwise available. See Atlantic Sugar, Ltd., 36 Fed. Reg. 744 F.2d 1550 (Fed. Cir. 1984).

The Department has broad discretion to determine whether to reject an entire submission when the Department is unable to verify submitted information. The Department evaluates each situation on the facts. In practice, depending on the scope of the deficiency, the Department may use portions of a submission which have been verified and not use portions which cannot be verified. See, e.g., Certain Stainless Steel Sheet and Strip Products from Spain, 49 FR 35338 (1984). The Department has no authority to add a "substantial completeness" test to the regulation. The verification requirement is neither punitive nor remedial; it is an integral part of the investigatory process.

Prior to resorting to best information available, the Department as a matter of practice often allows a respondent to correct a deficiency in a submission. First, the Department may request a supplemental submission of information after it receives a deficient response to the questionnaire referred to in § 355.31(b). Second, the Department often permits a respondent to correct a deficiency during the verification process, depending on the nature and scope of the deficiency. Under § 355.31(b), the Department has the authority to request an additional submission at any time during the proceeding. Under section 355.31(a), the respondent's right to submit factual information is subject to certain time limits necessitated by statutory deadlines. Although the statute does not require it, the Department usually does not use information submitted in support of the petition as best information available. To make this point as clear as possible, we have modified the paragraph to state "may include" rather than "includes."

We disagree that section 776(b) eliminates the Department's authority to require use of such information. For purposes of final determinations in investigations, the Department is permitted to use information submitted in support of the petition as best information available in an administrative review. The statute merely highlights the possibility of using such information during an investigation without precluding its use during an administrative review. This interpretation is supported by the following statement in the legislative history: "The express reference in the statute to the use of information submitted in support of the petition as the best information available for purposes of final determinations in investigations should be interpreted as precluding the administering authority from using the best information available for purposes of administrative reviews." H.R. Conf. Rep. No. 1158, 96th Cong., 2d Sess. 177 (1984)

Sec. 355.38

Comment: Several parties state that the time limits for submission of case briefs are unreasonable for one or more of the following reasons: (1) the Department often does not issue its verification reports until after the time limits expire; (2) the Department often does not provide information under protective order until shortly before or even after the time limits expire; (3) respondents often do not obtain disclosure of the preliminary determination or results of review until two weeks after it is published and, at the same time, they may be preparing for verification; and (4) the Department has extended the time limit for submission of information (for example, in cases in which the final determination is postponed) to a date after the time limit for submission of the case brief. The unreasonable time limits in paragraphs (b) and (c) make it impossible for interested parties, especially domestic interested parties, to comment on important information in the record of the proceeding.

Three of these parties suggest that we delete this section and continue the current administrative practice, based on § 355.34 of the existing regulation, of...
establishing specific deadlines in each proceeding. Alternatively, these and other parties suggest one of the following modifications in this section: (1) measure the time limit for the case brief from the date of release of the verification report (one party suggests 10 days); (2) permit separate submission of written comments on the verification report not later than 15 days before the scheduled date for the final determination; (3) permit submission of written comments not later than 10 days after submission of any factual information; and (4) permit the Department to modify any of the time limits for submission of briefs. One party believes that the Department should distribute more evenly the time limits for case and rebuttal briefs.

One party believes we should amend the regulation to provide for submission of written comment prior to the date of the preliminary determination and the case brief.

Several parties urge the Department to permit post-hearing briefs. They believe such briefs are necessary to cover new arguments brought out at the hearing, to clarify statements made at the hearing, and to provide complete answers to questions raised by the Department at the hearing. One party suggests that the Department could limit the length of such briefs to 10 double-spaced pages, as the Commission does, in order to ensure that the arguments are concise and selective.

Regarding paragraph (b), two parties suggest that, rather than requiring all issues relevant to the final determination or results of review to be "presented in full" in the case brief, the Department should require all such issues to be identified and, to the extent not previously briefed, presented in full. For issues previously briefed, the submitter should be required to reference the document in which the argument is presented in full.

Regarding paragraph (d), one party recommends that the Department require the submitter of the case or rebuttal brief to serve a copy on any U.S. Government agency that has submitted a case brief.

One party suggests that the Department modify paragraph (e) to permit introduction of non-documentary exhibits at hearings.

Department's Position: The Department believes that the time limits in this section will provide all interested parties a reasonable opportunity to comment on the record of the proceeding. In administrative reviews, the Department's practice is to conduct verifications prior to the scheduled date of the preliminary determination. This practice allows the parties to the proceeding sufficient opportunity for preparation of case and rebuttal briefs after they have obtained access to the verification report and all factual information. In investigations, the regulation will encourage the Department to conduct its verification as early as possible. We have extended the deadlines for submission of case and rebuttal briefs in investigations in order to increase the likelihood that parties will be able to comment on verification reports or other factual information in those briefs, without curtailing the Department's capability of considering and addressing the parties' comments in the final determination. Paragraph (c) (proposed paragraph (b)) already contains adequate authority for the Department to alter the time limits for submission of case briefs in an investigation to cover the situations described in the comments. Paragraph (d) (proposed paragraph (c)) likewise permits the Department, as appropriate, to adjust the time limit for submission of rebuttal briefs. In this manner, the regulation ensures that the Department retains the necessary discretion to establish realistic time limits in any proceeding in which the normal time limits are too short.

The regulation does not limit submissions of written argument prior to the date of the preliminary determination or after that date and prior to the submission of the case brief. Regarding the suggestion that the Department permit post-hearing briefs, we believe the case and rebuttal briefs afford each party to the proceeding ample opportunity to address the issues and comment on the factual information. Moreover, under paragraph (f)(3) (proposed paragraph (e)(3)) of this section, the presiding officer at the hearing "may question any interested party or witness and may request interested parties to present additional written argument." These procedures, we believe, eliminate the need for post-hearing briefs in every case, particularly in view of the fact that all issues addressed at the hearing first must be addressed in the case or rebuttal brief.

The requirement in paragraph (c) (proposed paragraph (b)) that the party "[e]pecially present in full" all arguments which the party wants the Department to consider in the final determination or final results of review is important given the difficult task the Department often faces at that late date in the proceeding. The convenience of having all arguments consolidated in a single section of the record affords the Department additional effort required of the interested parties. If necessary, the interested party may attach to the case brief as appendices the relevant portions of earlier submissions rather than re-write an entire argument.

We agree that the submitter of a case or rebuttal brief should be required to serve a copy of the brief on any U.S. Government agency that has submitted a case brief. Accordingly, we have modified paragraph (e) (proposed paragraph (d)) to include this requirement.

Regarding introduction of exhibits at hearings, the Department has not found it necessary to include non-documentary exhibits in a record of a proceeding. An interested party may use alternative means of explanation, such as charts or diagrams, which are easily incorporated into the official and public record.

We note that we have revised paragraph (a) to clarify that the Department will return untimely submissions to the submitter with written notice stating the reasons for return of the document in question.

We also note that we have added a new paragraph (b), which concerns requests for hearings. We have added this paragraph to allow sufficient time for all parties and the Department to prepare for a hearing.

Sec. 355.38(f)

Note.—The following comments were submitted in response to the proposed rule on procedures for imposing sanctions for violation of an antidumping or countervailing duty protective order.

Comment: Two parties recommend that the Department close the administrative hearings in antidumping and countervailing duty proceedings when necessary to permit disclosure of propriety information. One of these parties suggests a portion of the hearing be closed only when all parties to the investigation consent. The other party suggests that the Department withhold copies of the transcript from the public for 40 hours to permit counsel to delete proprietary information from it. The spontaneous nature of testimony at a hearing increases the risk of an inadvertent disclosure of propriety information. Closed hearings would reduce this risk.

Department's Position: Closing hearings to permit the discussion of business propriety information is administratively unfeasible. Determining which participants have access to each party's information under protective order and excluding those who do not have access to the relevant information to be disclosed would lead to excessive loss of time. Even assuming
it could be ascertained in a reasonable time. Indeed, if different parties' proprietary data were to be disclosed at various times during the investigation, individuals would likely be permitted to attend or be barred from the proceeding at particular times, depending on whether or not they have access to the data under protective order. Furthermore, special arrangements would be necessary to grant the court reporter access to the information under protective order, and sanitized versions of the hearing transcript, perhaps in multiple versions, would need to be created, at substantial cost to the Department. For these reasons, the Department has consistently denied requests to close hearings. Furthermore, we have never encountered a situation where an issue could not be addressed at a hearing without disclosing proprietary data.

We note that we have modified paragraph (k) (proposed paragraph (e)) to provide that hearings ordinarily will be held seven days (instead of 14 days) after the scheduled date for submission of rebuttal briefs in an administrative review. We also have modified paragraph (f)(3) (proposed paragraph (e)(3)) to clarify that parties may submit an additional written argument only at the Department's request.

Sec. 355.39

Comment: Two parties believe that the time limits for submission of additional subsidy allegations (§ 355.31) and for consideration of additional subsidy practices discovered by the Department should be consistent. They recommend that the Department adopt the standard in § 355.39(a) ("if the Secretary concludes that sufficient time remains . ." ) because it is reasonable and practical.

Regarding deferral of examination of a subsidy (paragraph (b)), two parties would limit the Department's discretion, because the Department's decision to defer consideration might mean the difference between a de minimis and an above de minimis rate of subsidization and might significantly affect the Commission's determination of injury. These parties would modify paragraph (b) to provide that the Department could either (1) declare the investigation "extraordinarily complicated" under § 355.15(b) when the newly-discovered practice could significantly affect the outcome of the investigation or (2) find that "extraordinary circumstances" justify postponement when the Department concludes that insufficient time remains in the investigation for even a preliminary analysis of the newly-discovered practices.

Another party suggests that we expand this section to describe how the Department would investigate a subsidy practice discovered during an antidumping investigation. The Department would be required either to examine the subsidy practice in an ongoing countervailing duty proceeding, or, if there is no such proceeding, to inform petitioners in the antidumping case how to file a countervailing duty petition.

Department's Position: Regarding the time limit for submission of additional subsidy allegations, see the Department's position on § 355.31(c).

In considering whether "sufficient time remains" to investigate an additional subsidy practice, the Department would take into account the potential significance of the additional subsidy to the outcome of the investigation and would, if appropriate, declare the investigation "extraordinarily complicated" under § 355.15(b). The Department would apply the criteria specified in § 355.15(b)(2) in making this decision under that section. It is not necessary to modify § 355.39 to provide authority for the Department to do what § 355.15(b) already authorizes the Department to do. There is no authority to postpone the final determination on the basis of "extraordinary circumstances," as suggested by the comment. Similarly, it would add nothing to the regulation to include in § 355.39 a statement of how the Department would investigate a subsidy practice discovered during an antidumping investigation. These regulations adequately describe the requirements for the initiation and conduct of a countervailing duty investigation, as well as the limitations on the Department's use of proprietary information.

List of Subjects in 19 CFR Part 355

Business and industry, Foreign trade, Imports, Trade practices.

Date: December 2, 1988.

Jan W. Marsé, Assistant Secretary for Import Administration.

For the reasons set forth in the preamble, 19 CFR Part 355 is revised to read as follows:

PART 355—COUNTERVAILING DUTIES

Subpart A—Scope and Definitions

Sec. 355.1 Scope.

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

5. "Person" includes any
person, firm, partnership,
association, corporation,
trust, estate, or other
entity of any kind, natural
or artificial, including a
controlled entity of any
kind, natural or artificial.

6. "Subsidies" and any
amendments accepted by
the "Agreement on
Interpretation and
Termination of
Subsidies" is required.
This part incorporates the
regulatory changes made
pursuant to Title VI of the
Trade and Tariff Act of 1984
(Pub. L. No. 98-624; Title
XVIII, Subtitle B, Chapter
3 of the Tax Reform Act of
October 22, 1986). Certain
portions of the regulations
in this part do not apply to
proceedings under section
303 of the Act in the case
of the merchandise from
a country that is not a "country
under the Agreement," as
defined in section
701(b) of the Act, and also
do not apply to an injury
investigation under section
303 of the Act for the
merchandise. Specifically,
for such proceedings under
section 303:
(a) No determination by
the Commission under section
703(a), 704, or 705(b)(1)
of the Act is required;
(b) No investigation may be
suspected by the Secretary
under section
704(c) of the Act and § 355.18(b);
(c) No finding of critical
circumstances may be made by
the Secretary, October 30, 1984;
and
(d) If an allegation or factual
information regarding injury
and subsidies is required by this
part, only an allegation or
factual information regarding
subsidies is required.

5. Definitions.
(a) Act. "Act" means the Tariff
Act of 1930, as amended.
(b) Agreement. "Agreement" means
the "Agreement on
Interpretation and
Application of Articles VI, XVI,
and XXIII of the General Agreement
on Tariffs and Trade," that is, the
Subsidies Code, and any
amendments accepted by
the United States.
(c) Commission. "Commission" means
the United States International Trade
Commission.
(d) "Country" means a
nation, republic, or a political
subdivision, dependent territory, or
possession of a foreign country, and
may include an association of two or
more foreign countries, political
subdivisions, dependent territories, or
possessions of foreign countries in a
customs union outside the United States.
(e) Customs Service. "Customs
Service" means the United States
Customs Service of the United States
Department of the Treasury.
(f) Department. "Department" means
the United States Department of
Commerce.
(g) Factual information. "Factual
information" means:
(1) Initial and supplemental
questionnaire responses;
(2) Data or statements of facts in
support of allegations;
(3) Other data or statements of facts;
and
(4) Documentary evidence.
(h) Industry, "industry" means the
producers in the United States
collectively of the like product, except
those producers in the United States
that the Secretary excludes under
section 771(4)(B) of the Act on the
grounds that they are also
importers (or are related to
importers, producers, or
exporters) of the
merchandise. Under
section 771(4)(C) of the Act, an
"industry" may mean
producers in the
United States, as defined
above in this paragraph,
in a particular market in
the United States if such
producers sell all or almost
all of their production of
the like product in that
market and if the
market is not supplied to
any substantial degree by
producers of the like
product located elsewhere
in the United States.

6. "Person" includes any
person, firm, partnership,
association, corporation,
trust, estate, or other
entity of any kind, natural
or artificial, including a
controlled entity of any
kind, natural or artificial.

5. Proceeding. A "proceeding"egins on the date of filing of a
petition, publication of notice of
initiation under § 355.11, or
publication of notice of
initiation under § 355.22 if the
initiation is of the
merchandise subject to an
understanding or other kind
of agreement accepted § 355.17(b),
and ends on the date of publication
of the earliest of notice of
(1) dismissal of petition, (2)
rescission of initiation, (3)
termination of investigation, (4)
negative determination that has the
effect of terminating the proceeding,
(5) revocation of an order, or (6)
termination of a suspended
investigation.

6. Sale. A "sale" includes
a contract to sell and a lease that is
equivalent to a sale. A "likely sale"
means a person's irrevocable offer
to sell.

7. Secretary. "Secretary" means the
Secretary of Commerce or a
designee. The Secretary has delegated
to the Assistant Secretary for Import
Administration the authority to make
determination under § 355.18(l),
355.20, and 355.22(l). The Deputy
Assistant Secretaries for Import
Administration have delegated
authority to make determination
under § 355.18(l), 355.20, and
355.22(l). The General
Administration has delegated
to the Assistant Secretary for Import
Administration the authority to make
determination under § 355.18(l),
355.20, and 355.22(l). The Deputy
Assistant Secretaries for Import
Administration have delegated
authority to make determination
under § 355.18(l), 355.20, and
355.22(l). The General
Administration has delegated
to the Assistant Secretary for Import
Administration the authority to make
determination under § 355.18(l),
355.20, and 355.22(l). The Deputy
Administration, Investigations, and Compliance have other delegated authority relating to countervailing duties.

§ 355.3 Record of proceedings.
(a) Official record. The Secretary will maintain in the Import Administration Central Records Unit, at the location stated in § 355.31(d), an official record of each proceeding. The Secretary will include in the record all factual information, written argument, or other material developed by, presented to, or obtained by the Secretary during the course of the proceeding which pertains to the proceeding. The record will include government memoranda pertaining to the proceeding, memoranda of ex parte meetings, determinations, notices published in the Federal Register, and transcripts of hearings. The record will not include any factual information, written argument, or other material which is not timely filed or which the Secretary returns to the submitter under § 355.31(b)(2), 355.32(d), 355.32(g), or 355.34(c). The record will contain material that is public, proprietary, privileged, and classified. For purposes of section 516A(b)(2) of the Act, the record is the official record of each judicially reviewable segment of the proceeding.

(b) Public record. The Secretary will maintain in the Central Records Unit a public record of each proceeding. The record will consist of all material described in paragraph (a) of this section that the Secretary decides is public information within the meaning of § 355.4(a). government memoranda or portions of memoranda that the Secretary decides may be disclosed to the general public, plus public versions of all determinations, notices, and transcripts. The public record will be available to the public for inspection and copying in the Central Records Unit at the location stated in § 355.31(d). The Secretary will charge an appropriate fee for providing copies of documents.

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

§ 355.4 Public, proprietary, privileged, and classified information.
(a) Public information. The Secretary normally will consider the following to be public information:
(1) Factual information of a type that has been published or otherwise made available to the public by the person submitting it;
(2) Factual information that is not designated proprietary by the person submitting it;
(3) Factual information which, although designated proprietary by the person submitting it, is in a form which cannot be associated with or otherwise used to identify activities of a particular person;
(4) Publicly available laws, regulations, decrees, orders, and other official documents of a country, including English translations; and...

(b) Proprietary information. The Secretary normally will consider the following factual information to be proprietary information, if so designated by the submitter:
(1) Business or trade secrets concerning the nature of a product or production process;
(2) Production costs (but not the identity of the production components unless a particular component is a trade secret);
(3) Distribution costs (but not channels of distribution);
(4) Terms of sale (but not terms of sale offered to the public);
(5) Prices of individual sales, likely sales, or other offers (but not (i) components of prices, such as transportation, if based on published schedules, (ii) dates of sales, (iii) product descriptions except as described in paragraph (b)(1), or (iv) order numbers);
(6) The names of particular customers, distributors, or suppliers (but not destination or designation of type of customer, distributor, or supplier, unless the destination or designation would reveal the name);
(7) The exact amounts of the gross or net subsidies received and used by a person (but not descriptions of the operations of the subsidies, or the amount if included in official public statements or published documents);
(8) The names of particular persons from whom proprietary information was obtained; and...

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

(d) Classified information. Classified information is information that is classified under Executive Order No. 12356 of April 2, 1982 (43 FR 28049) or successor executive order, if applicable.

§ 355.5 Library of foreign subsidy practices and countervailing measures.

The Secretary will maintain in the Central Records Unit a library of public information relating to all foreign subsidy practices and countervailing measures that are known to the Secretary, whether or not the subject of a proceeding. The Secretary will make documents in the library available to the public and will charge an appropriate fee for providing copies of documents.

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

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

(a) Except as provided in paragraphs (b), (c), and (d) of this section, all amendments made by section 626 of the 1984 Act which affect authorities administered by the Secretary are effective on October 30, 1984.
(b) Amendments made by sections 602, 611, 612, and 620 of the 1984 Act which affect authorities administered by the Secretary take effect immediately with respect to all investigations and administrative reviews begun on or after October 30, 1984.
(c) Amendments made by section 623 of the 1984 Act, regarding judicial review, apply with respect to civil actions pending on, or filed on or after, October 30, 1984.
(d) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the Secretary may implement the amendments of the 1984 Act at a date later than October 30, 1984, if the Secretary determines that implementation in accordance with paragraphs (a) or (b) of this section would prevent the Department from complying with other requirements of law.

§ 355.7 De minimis net subsidies disregarded.

For purposes of this part, the Secretary will disregard any aggregate net subsidy that the Secretary determines is less than 0.2% ad valorem, or the equivalent specific rate.
Administration, Investigations, and Compliance have other delegated authority relating to countervailing duties.

§ 355.3 Record of proceedings. (a) Official record. The Secretary will maintain in the Import Administration Central Records Unit, at the location stated in §355.31(d), an official record of each proceeding. The Secretary will include in the record all factual information, written argument, or other material developed by, presented to, or obtained by the Secretary during the course of the proceeding which pertains to the proceeding. The record will include government memoranda pertaining to the proceeding, memoranda of ex parte meetings, determinations, notices published in the Federal Register, and transcripts of hearings. The record will not include any factual information, written argument, or other material which is not timely filed or which the Secretary returns to the submitter under §355.31(b)(2), 355.32(d), 355.32(g), or 355.34(c). The record will contain material that is public, proprietary, privileged, and classified. For purposes of section 516A(b)(2) of the Act, the record is the official record of each judicially reviewable segment of the proceeding.

(b) Public record. The Secretary will maintain in the Central Records Unit a public record of each proceeding. The record will consist of all material described in paragraph (a) of this section that the Secretary decides is public information within the meaning of §355.4(a), governmental memoranda or portions of memoranda that the Secretary decides may be disclosed to the general public, plus public versions of all determinations, notices, and transcripts. The public record will be available to the public for inspection and copying in the Central Records Unit (see §355.31(d)). The Secretary will charge an appropriate fee for providing copies of documents.

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

§355.4 Public, proprietary, privileged, and classified information. (a) Public information. The Secretary normally will consider the following to be public information:

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

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

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

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

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

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

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

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

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

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

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

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

(7) The exact amounts of the gross or net subsidies received and used by a person (but not descriptions of the operations of the subsidies, or the amount if included in official public statements or published documents);

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

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

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

(d) Classified information. Classified information is information that is classified under Executive Order No. 12356 of April 2, 1982 (43 FR 26945) or successor executive order, if applicable.

§355.5 Library of foreign subsidy practices and countervailing measures. The Secretary will maintain in the Central Records Unit a library of public information relating to all foreign subsidy practices and countervailing measures that are known to the Secretary, whether or not the subject of a proceeding. The Secretary will make documents in the library available to the public and will charge an appropriate fee for providing copies of documents. For further information, contact the Central Records Unit at the location stated in §355.31(d).

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

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

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

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

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

§355.7 De minimis net subsidies disregarded. For purposes of this part, the Secretary will disregard any aggregate net subsidy that the Secretary determines is less than 0.5% of value, or the equivalent specific rate.
Subpart B—Counter-vailing Duty Procedures

§ 355.11 Self-initiation.

(a) In general. (1) If the Secretary determines from available information that an investigation is warranted with respect to the merchandise, the Secretary will initiate an investigation and publish in the Federal Register notice of “Initiation of Counter-vailing Duty Investigation.” The Secretary will publish the notice only after providing the government of the affected country an opportunity for consultation to the extent required by Article 3(1) of the Agreement or by a substantially equivalent obligation.

(2) The notice will include:

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

(ii) The name of the country in which the merchandise is produced and, if the merchandise is imported from a country other than that in which it is produced, the name of the intermediate country; and

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

(b) Information provided to the commission. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will notify the Commission at the time of initiation of the investigation and will make available to it and to its employees directly involved in the proceeding all information upon which the Secretary bases the initiation and with which the Commission may consider relevant to its injury determinations.

§ 355.12 Petition requirements.

(a) In general. Any interested party, as defined in paragraph (i)(3), (i)(4), (i)(9), or (i)(10) of § 355.2, may file on behalf of an industry a petition under section 731 of the Act (19 U.S.C. 1671). To initiate an investigation, the petition shall:

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

(2) The identity of the industry on behalf of which the petitioner is filing, including the names and addresses of other persons in the industry (if numerous, provide information at least for persons that, based on publicly available information, individually accounted for two percent or more of the industry, in terms of sales or production levels, during the most recent 12-month period);

(3) A statement indicating whether the petitioner has filed for import relief under sections 337 or 732 of the Act (19 U.S.C. 1337 or 1672a), sections 201 or 301 of the Trade Act of 1974 (19 U.S.C. 2251 or 2411), or section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) with respect to the merchandise;

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

(5) The name of the country in which the merchandise is produced and, if the merchandise is imported from a country other than that in which it is produced, the name of the intermediate country:

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

(7) The alleged subsidy and factual information (particularly documentary evidence) relevant to the alleged subsidy, including the authority under which it is provided, the manner in which it is paid, and the value of the subsidy to producers or exporters of the merchandise;

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

(i) Domestic subsidies described in section 771(5) of the Act that the government of the affected country provides to the upstream supplier;

(ii) The competitive benefit the subsidies bestow on the merchandise;

(iii) The significant effect the subsidies have on the cost of producing the merchandise;

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

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

(10) If the merchandise is from a country entitled to an injury test for the merchandise, factual information regarding material injury, threat of material injury, or material retardation, as described in 19 CFR §§ 207.11 and 207.26;

(11) If the petitioner alleges “critical circumstances” under § 356.16, factual information regarding:

(i) Material injury which is difficult to repair;

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

(iii) An export subsidy inconsistent with the Agreement; and

(12) Any other factual information on which the petition is based.

(c) Simultaneous filing with the Commission. If the merchandise is from a country entitled to an injury test for the merchandise, the petitioner must file a copy of the petition with the Commission and the Secretary on the same day and so certify in submitting the petition to the Secretary.

(d) Proprietary status of information. The Secretary will not consider any factual information for which the petitioner requests proprietary treatment unless the petitioner meets the requirements of § 355.13.

(e) Amendment of petition. The Secretary will allow timely amendment of the petition. If the merchandise is from a country entitled to an injury test for the merchandise, the petitioner must file an amendment with the Commission and the Secretary on the same day and so certify in submitting the amendment to the Secretary. The timeliness of new allegations is controlled under § 355.31.

(f) Where to file; time of filing; format and number of copies. The requirements of § 355.31(d), (e), and (f) apply to this section.

(g) Notification of affected country's representative. Upon receipt of a petition, the Secretary will deliver a public version of the petition, as described in § 355.31(e)(2), to a representative in Washington, DC, of the government of the affected country.

(h) Petition based upon derogation of an international undertaking on official export credits. In addition to the other requirements of this section, if the sole basis of a petition is the derogation of an international undertaking on official
export credits, the Secretary will immediately notify the Secretary of the Treasury of the filing. The petitioner shall file a copy of the petition with the Secretary of the Treasury and the Secretary on the same day and so certify in submitting the petition to the Secretary.

(i) Assistance to small businesses: additional information.

(1) The Secretary will provide technical assistance to eligible small businesses, as defined in section 330 of the Act, to enable them to prepare and file petitions. The Secretary may deny assistance if the Secretary concludes that the petition, if filed, could not satisfy the requirements of § 355.13.

(2) For additional information concerning petitions, contact the Deputy Assistant Secretary for Investigations, Import Administration, International Trade Administration, Room 8098, U.S. Department of Commerce, Pennsylvania Ave and 14th Street, N.W., Washington, D.C. 20220; (202) 377-5437.

(j) Limitation on communication before initiation.

(1) Except as provided in paragraph (j)(2) of this section, before the Secretary decides whether to initiate an investigation, the Secretary will not accept from an interested party, as defined in paragraph (j)(1) or (j)(2) of § 355.2, oral or written communication regarding a petition except inquiries concerning the status of the proceeding.

(2) The Secretary will provide the government of the affected country an opportunity for consultation to the extent required by Article 3(1) of the Agreement or by a substantially equivalent obligation.

(The information collection requirements contained in paragraph (b) have been approved by the Office of Management and Budget under control number 0625-0148.)

§ 355.13 Determination of sufficiency of petition.

(a) Determination of sufficiency. Not later than 20 days after a petition is filed under § 355.12, the Secretary will determine whether the petition properly alleges the basis on which a countervailing duty may be imposed under section 701(a) of the Act, contains information reasonably available to the petitioner supporting the allegations, and is filed by an interested party as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2.

(b) Notice of initiation. If the Secretary determines that the petition is sufficient under paragraph (a) of this section, the Secretary will initiate an investigation and publish in the Federal Register notice of “Initiation of Countervailing Duty Investigation.” The notice will include the information described in § 355.11(a)(2). If the petition is from a country entitled to an injury test for the merchandise, the Secretary will notify the Commission at the time of initiation of the investigation and will make available to it and to its employees directly involved in the proceeding all information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

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

§ 355.14 Request for exclusion from countervailing duty order.

(a) Any producer or exporter which exported the merchandise to the United States during the period described in paragraph (b)(1) of this section and which desires exclusion from a countervailing duty order must submit to the Secretary, not later than 30 days after the date of publication of the notice of initiation under § 355.11 or § 355.13, an irrevocable written request for exclusion.

(b) The person must submit with the request:

(1) The person’s certification that the person did not apply for or receive any net subsidy on the merchandise, during the period from the beginning of the last fiscal year for which the person has records to the date of filing of the petition, from any program listed in the Secretary’s notice of initiation (except programs that the Secretary has previously found, in a notice published under § 355.20 or § 355.22(c)(4), not to be countervailable) and will not apply for or receive any subsidy on the merchandise in the future;

(2) The certification of the government of the affected country that the government did not provide to that person any net subsidy during the period described in paragraph (b)(1) of this section; and

(3) If the person is not the producer of the merchandise, the certification under paragraph (b)(3) of this section of the supplier, supplier’s employer, and manufacturer of the merchandise and the certification under paragraph (b)(2) of this section of the government regarding those suppliers and producers.

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

§ 355.15 Preliminary determination.

(a) In general. (1) Not later than 65 days after the date of filing of a petition or the date of publication of notice of initiation under § 355.11, the Secretary will make a determination based on the available information at the time whether there is a reasonable basis to believe or suspect that a subsidy is being provided with respect to the merchandise. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will not make the determination unless the Commission has made an affirmative preliminary determination.

(2) The Secretary’s determination will include:

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

(ii) The estimated net subsidy, if any, stated on a country-wide basis, except as provided in § 355.20(d); and

(iii) A preliminary finding on critical circumstances, if appropriate, under § 355.16(b)(2)(i).

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

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

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

(b) The Secretary will publish in the Federal Register notice of “Affirmative (Negative) Preliminary Countervailing Duty Determination,” including the estimated net subsidy, if any, and an invitation for argument consistent with § 355.38.

(c) The Secretary will notify all parties to the proceeding. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary also will notify the Commission.

(b) Postponement in extraordinarily complicated investigation. If the Secretary decides the investigation is extraordinarily complicated, the Secretary may postpone the preliminary determination to not later than 120 days after the proceeding begins. The Secretary will base the decision on express findings that:
export credits, the Secretary will immediately notify the Secretary of the Treasury of the filing. The petitioner shall file a copy of the petition with the Secretary of the Treasury and the Secretary on the same day and so certify in submitting the petition to the Secretary.

(1) Assistance to small businesses; additional information. (1) The Secretary will provide technical assistance to eligible small businesses, as defined in section 330 of the Act, to enable them to prepare and file petitions. The Secretary may deny assistance if the Secretary concludes that the petition, if filed, could not satisfy the requirements of § 355.13.

(2) For additional information concerning petitions, contact the Deputy Assistant Secretary for Investigations, Import Administration, International Trade Administration, Room 8098, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230; (202) 377-5497.

(1) Limitation on communication before initiation. (1) Except as provided in paragraph (j)(2) of this section, before the Secretary decides whether to initiate an investigation, the Secretary will not accept from an interested party, as defined in paragraph (i)(1) or (i)(2) of § 355.2, oral or written communication regarding a petition except inquiries concerning the status of the proceeding.

(2) The Secretary will provide the government of the affected country an opportunity for consultation to the extent required by Article 3(1) of the Agreement or by a substantially equivalent obligation.

(The information collection requirements contained in paragraph (b) have been approved by the Office of Management and Budget under control number 0625-0146.)

§ 355.13 Determination of sufficiency of petition.

(a) Determination of sufficiency. Not later than 20 days after a petition is filed under § 355.12, the Secretary will determine whether the petition properly alleges the basis on which a countervailing duty may be imposed under section 701(a) of the Act, contains information reasonably available to the petitioner supporting the allegations and is filed by an interested party as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2.

(b) Notice of initiation. If the Secretary determines that the petition is sufficient under paragraph (a) of this section, the Secretary will initiate an investigation and publish in the Federal Register notice of "Initiation of Countervailing Duty Investigation." The notice will include the information described in § 355.11(a)(2). If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will notify the Commission at the time of initiation of the investigation and will make available to it and to its employees directly involved in the proceeding all information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

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

§ 355.14 Request for exclusion from countervailing duty order.

(a) Any producer or exporter which exported the merchandise to the United States during the period described in paragraph (b)(1) of this section and which desires exclusion from a countervailing duty order must submit to the Secretary, not later than 30 days after the date of publication of the notice of initiation under § 355.11 or § 355.13, an irrevocable written request for exclusion.

(b) The person must submit with the request:

(1) The person's certification that the person did not apply for or receive any net subsidy on the merchandise, during the period from the beginning of the last fiscal year for which the person has records to the date of filing of the petition, from any program listed in the Secretary's notice of initiation (except programs that the Secretary has previously found, in a notice published under § 355.20 or § 355.22(c)(6), not to be countervailable) and will not apply for or receive any subsidy on the merchandise in the future.

(2) The certification of the government of the affected country that the government did not provide to that person any net subsidy during the period described in paragraph (b)(1) of this section; and

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

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

§ 355.15 Preliminary determination.

(a) In general. (1) Not later than 85 days after the date of filing of a petition or the date of publication of notice of initiation under § 355.11, the Secretary will make a determination based on the available information at the time whether there is a reasonable basis to believe or suspect that a subsidy is being provided with respect to the merchandise. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will not make the determination unless the Commission has made an affirmative preliminary determination.

(2) The Secretary's determination will include:

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

(ii) The estimated net subsidy, if any, stated on a country-wide basis, except as provided in § 355.20(d); and

(iii) A preliminary finding on critical circumstances, if appropriate, under § 355.16(b)(2)(i).

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

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

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

(4) The Secretary will publish in the Federal Register notice of "Affirmative (Negative) Preliminary Countervailing Duty Determination," including the estimated net subsidy, if any, and an invitation for argument consistent with § 355.38.

(5) The Secretary will notify all parties to the proceeding. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary also will notify the Commission.

(b) Postponement in extraordinarily complicated investigation. If the Secretary decides the investigation is extraordinarily complicated, the Secretary may postpone the preliminary determination to not later than 120 days after the proceeding begins. The Secretary will base the decision on express findings that:
(1) The respondent parties to the proceeding are cooperating in the investigation;

(2) The investigation is extraordinarily complicated by reason of (i) the large number or complex nature of the alleged subsidies, (ii) novel issues raised, (iii) the need to determine the extent to which particular subsidies are used by individual producers or exporters, or (iv) the large number of producers and exporters; and

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

(c) Postponement at the request of the petitioner. If the petitioner, not later than 25 days before the scheduled date for the Secretary's preliminary determination, requests a postponement and states the reasons for the request, the Secretary will postpone the preliminary determination to not later than 150 days after the date of filing of the petition, unless the Secretary finds compelling reasons to deny the request.

(d) Postponement to investigate upstream subsidies. (1) Any interested party shall submit a written request to the Commission to postpone an investigation to not later than 10 days before the scheduled date for the Secretary's preliminary determination under this part.

(2) If the Secretary decides to investigate an upstream subsidy allegation and concludes that additional time is needed to investigate the allegation, the Secretary may postpone the preliminary determination to not later than 250 days after the proceeding begins (up to 310 days if also postponed under paragraph (b) or (c) of this section).

(e) Notice of postponement. (1) If the Secretary decides to postpone the preliminary determination under paragraph (b) or (c) of this section, the Secretary will notify all parties to the proceeding not later than 20 days before the scheduled date for the Secretary's preliminary determination and will publish in the Federal Register notice of "Postponement of Preliminary Countervailing Duty Determination," stating the reasons for the postponement.

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

(f) Expedited preliminary determination. Not later than 65 days after the initiation of an investigation under § 355.13, the Secretary will review the record of the first 50 days of the investigation. If the available information is sufficient for the Secretary to make a preliminary determination, the Secretary will disclose to the petitioner, and any interested party that has requested disclosure, all available public and proprietary information (subject to the requirements of § 355.34). If, not later than three business days after disclosure, each party to whom disclosure was made furnishes an irrevocable written waiver of verification and agrees to a preliminary determination based on information in the record on the 50th day of the investigation, the Secretary will make an expedited preliminary determination.

(g) Commission access to information. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding all information upon which the Secretary based the determination and which the Commission may consider relevant to its injury determination.

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

§ 355.16 Critical circumstances findings.

(a) In general. If the merchandise is from a country entitled to an injury test for the merchandise and if a petitioner submits to the Secretary a written allegation of critical circumstances, with reasonably available factual information supporting the allegation, not later than 21 days before the scheduled date of the Secretary's final determination, or on the Secretary's own initiative in an investigation under § 355.11, the Secretary will make a finding whether:

(1) Any alleged export subsidy that benefits the merchandise is inconsistent with the Agreement and the rate of dumping is reasonably likely to injure a domestic industry.

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

(b) Preliminary finding. (1) If the petitioner submits the allegation of critical circumstances not later than 30 days before the scheduled date for the Secretary's final determination under § 355.20, the Secretary, based on the available information, will make a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances as described in paragraph (a) of this section exist.

(2) The Secretary will issue the preliminary finding:

(i) Not later than the Secretary's preliminary determination under § 355.15, if the allegation is submitted not later than 20 days before the scheduled date for the preliminary determination; or

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

The Secretary will notify the Commission and publish in the Federal Register notice of the preliminary finding.

(c) Suspension of liquidation. If the Secretary makes an affirmative preliminary finding of critical circumstances, either before or at the time of an affirmative preliminary determination under § 355.15, any suspension of liquidation ordered under § 355.15 will apply to all entries of the merchandise covered by the finding entered, or withdrawn from warehouse, for consumption on or after 90 days before the date of the order of suspension of liquidation. If the Secretary makes an affirmative preliminary finding of critical circumstances after an affirmative preliminary determination under § 355.15, the Secretary will amend the order suspending liquidation to apply to all entries of the merchandise covered by the finding entered, or withdrawn from warehouse, for consumption on or after 90 days before the date of the suspension of liquidation was first ordered.

(d) Final finding. For any allegation submitted not later than 21 days before the scheduled date for the Secretary's final determination under § 355.20, the Secretary will make a final finding on critical circumstances. If the final finding is affirmative and if the Secretary did not make an affirmative preliminary finding of critical circumstances, the Secretary will order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after 90 days before the date the Secretary ordered suspension of liquidation either as part of an affirmative preliminary or final determination. If the final finding is negative and if the Secretary made an affirmative preliminary finding of critical circumstances, the Secretary will end the retroactive suspension of liquidation ordered under paragraph (c) of this section, and will instruct the
§ 355.17 Termination of Investigation.

(a) Withdrawal of petition. (1) Except as provided in paragraph (b) of this section, the Secretary may terminate an investigation upon withdrawal of the petition by the petitioner, or on the Secretary's own initiative in an investigation initiated under § 355.11, after notifying all parties to the proceeding and, if the merchandise is from a country entitled to an injury test on the merchandise, after consultation with the Commission. The Secretary may not terminate an investigation unless the Secretary concludes the termination is in the public interest.

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

(b) Withdrawal of petition based on acceptance of quantitative restriction agreements. (1) The Secretary may not terminate under paragraph (a) of this section an investigation by accepting an understanding or other kind of agreement with the government of the affected country to restrict the volume of the merchandise unless the Secretary, taking into account the factors listed in section 704(a)(2)(B) of the Act, is satisfied that termination is in the public interest.

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

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

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

§ 355.18 Suspension of investigation.

(a) Agreement to eliminate or offset completely a subsidy or to cease exports. If the Secretary is satisfied that suspension is in the public interest, the Secretary may suspend an investigation at any time before the Secretary's final determination if the merchandise is from a country entitled to an injury test for the merchandise and if the Secretary:

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

(ii) Finds that extraordinary circumstances are present; and

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

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

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

(ii) The agreement will eliminate or offset completely at least 85 percent of the net subsidy.

(3) The Secretary may suspend an investigation under paragraph (b)(1) of this section by accepting an agreement with the government of the affected country to restrict the volume of the merchandise. In considering for the purpose of this paragraph whether suspension is in the public interest, the Secretary will take into account, in addition to other factors the Secretary considers appropriate, the factors listed in section 704(a)(2)(B) of the Act. To the extent practicable, the Secretary will consult with representatives of potentially affected United States consuming industries and potentially affected persons in the industry, including persons not party to the proceeding.

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

(d) Definition of "extraordinary circumstances." For purposes of paragraph (b) of this section, "extraordinary circumstances" means circumstances in which (1) suspension of the investigation will be more beneficial to the industry than continuation of the investigation and (2) there are a large number of alleged subsidy practices which are
complicated, the issues raised are novel, or the number of exporters is large.
(e) Monitoring. The Secretary will not accept an agreement unless effective monitoring of the agreement by the Secretary is practicable. In monitoring an agreement under paragraph (b) of this section, the Secretary will not be obliged to ascertain on a continuing basis the prices in the United States of the merchandise or of like products produced in the United States.

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

(g) Procedure for suspension of investigation. (1) The government of the affected country or the exporters, as appropriate, shall:
   (i) Submit to the Secretary a proposed agreement not later than 45 days before the scheduled date for the Secretary's final determination under § 355.20; and
   (ii) Serve a copy of an agreement preliminarily accepted by the Secretary on other parties to the proceeding not later than the day following the Secretary's preliminary acceptance.
   (2) The Secretary will:
       (i) Not later than 30 days before the date the Secretary suspends the investigation, notify all parties to the proceeding of the proposed suspension and provide to the petitioner a copy of the agreement preliminarily accepted by the Secretary (the agreement shall contain the procedures for monitoring compliance and a statement of the comparability of the agreement with the requirements of this section); and
       (ii) Consult with the petitioner concerning the proposed suspension.
   (3) The Secretary will provide all interested parties and United States Government agencies an opportunity to submit, not later than 10 days before the scheduled date for the Secretary's final determination, written argument and factual information concerning the proposed suspension.

(h) Acceptance of agreement. (1) If the Secretary accepts an agreement to suspend an investigation, the Secretary will publish in the Federal Register notice of Suspension of Countervailing Duty Investigation, including the text of the agreement. If the Secretary has not already published notice of affirmative preliminary determination, the Secretary will include that notice. In accepting an agreement, the Secretary may rely on factual or legal conclusions the Secretary reached in or after the affirmative preliminary determination.
   (2) If the Secretary suspends an investigation based on an agreement under paragraph (a) of this section, the Secretary will not order the suspension of liquidation of entries of the merchandise. If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension of liquidation ended on the effective date of notice of suspension of investigation and will instruct the Customs Service to release any cash deposit or bond.
   (3) If the Secretary suspends an investigation based on an agreement under paragraph (b) of this section, the Secretary will order the suspension of liquidation to continue or to begin, as appropriate. The suspension of liquidation will not end until the Commission completes any requested review, under section 704(h) of the Act, of the agreement. If the Commission receives no request for review within 20 days after the date of publication of the notice of suspension of investigation, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication and will instruct the Customs Service to release any cash deposit or bond.
   (4) If the Commission undertakes a review of an agreement under section 704(h) of the Act and determines that the agreement will not eliminate the injurious effect, the Secretary will resume the investigation on the date of publication of the Commission's determination as if the Secretary's affirmative preliminary determination had been made on that date. If the Commission determines that the agreement will eliminate the injurious effect, the Secretary will continue the suspension of investigation, order the suspension of liquidation ended on the date of publication of the Commission's determination, and instruct the Customs Service to release any cash deposit or bond.

(i) Continuation of investigation. (1) An interested party, as defined in paragraph (i)(2), (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, not later than 20 days after the date of publication of the Commission's determination, the Secretary may request in writing that the Secretary continue the investigation. If the merchandise is from a country entitled to an injury test for the merchandise, the party shall simultaneously file a request with the Commission to continue the investigation.
   (2) Upon receiving the request, the Secretary and, if appropriate, the Commission will continue the investigation.
   (i) If the Secretary and the Commission make affirmative final determinations, the suspension agreement will have no effect in accordance with the factual and legal conclusions in the Secretary's final determination. This paragraph does not affect the provisions of paragraph (b) of this section regarding suspension of liquidation.
   (ii) If the Secretary or the Commission makes a negative final determination, the agreement shall have no force or effect.

(j) Merchandise imported in excess of allowed quantity. (1) The Secretary may instruct the Customs Service not to accept entries, or withdrawals from warehouse, for consumption of the merchandise in excess of any quantity allowed by paragraph (i) or by an agreement under paragraph (a) or (b) of this section.
   (2) Imports in excess of the quantity allowed by an agreement may be exported or destroyed under Customs Service supervision, except that if the agreement is under paragraph (b)(3) of this section, the excess merchandise may be held for future opening under the agreement by placing it in a foreign trade zone or by entering it for warehouse.
   (k) Modification of quantitative restriction agreements. At the direction of the President or a designee, the Secretary will modify an agreement accepted under paragraph (b)(2) of this section as a result of consultation under section 761(a) of the Act.

§ 355.19 Violation of agreement.
(a) Immediate determination. If the Secretary determines that the signatory foreign government or exporters have violated a suspension agreement, the Secretary, without right of comment, will:
   (1) Order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the later of 90 days before the date of publication of the notice of cancellation of agreement, or the date of the first entry, or withdrawal from warehouse, for consumption of the merchandise the sale or export of which was in violation of the agreement;
   (2) If the investigation was not completed under § 355.18(l), resume the investigation as if the Secretary made an affirmative preliminary determination on the date of publication of the notice of cancellation and impose provisional measures by instructing the
proceeding of the proposed suspension later than the day following the preliminarily accepted by the Secretary.

(1) The government of the merchandise exported during a period of interim period.

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

(g) Procedure for suspension of investigation. (1) The government of the affected country or the exporters, as appropriate, shall:

(i) Submit to the Secretary a proposed agreement not later than 45 days before the scheduled date for the Secretary’s final determination under § 355.20; and

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

(2) The Secretary will:

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

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

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

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

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

(3) If the Secretary suspends an investigation based on an agreement under paragraph (b) of this section, the Secretary will order the suspension of liquidation of entries of the merchandise. If the Commission makes affirmative final determinations, the suspension agreement entered into effect in accordance with the factual and legal conclusions in the Secretary’s final determination. This paragraph does not affect the provisions of paragraph (h) of this section regarding suspension of liquidation.

(i) Merchandise imported in excess of allowed quantity. (1) The Secretary may instruct the Customs Service not to accept entries, or withdrawals from warehouse, for consumption of the merchandise in excess of any quantity allowed by paragraph (f) or by an agreement under paragraph (a) or (b) of this section.

(2) Imports in excess of the quantity allowed by an agreement may be exported or destroyed under Customs Service supervision, except that if the agreement is under paragraph (b)(3) of this section, the excess merchandise may be held for future opening under the agreement by placing it in a foreign trade zone or by entering it for warehouse.

(k) Modification of quantitative restriction agreements. At the direction of the President or a designee, the Secretary will modify an agreement accepted under paragraph (b)(2) of this section as a result of consultation under section 761(a) of the Act.

§ 355.19 Violation of agreement. (a) Immediate determination. If the Secretary determines that the signatory foreign government or exporters have violated a suspension agreement, the Secretary, without right of comment, will:

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

(2) If the investigation was not completed under § 355.18(l), resume the investigation as if the Secretary made an affirmative preliminary determination on the date of publication of the notice of cancellation and impose provisional measures by instructing the
Customs Service to require for each entry of the merchandise suspended under paragraph (a)(1) of this section a cash deposit or bond equal to the estimated net subsidy determined in the affirmative preliminary determination; (3) If the investigation was completed under § 355.18(i), issue a countervailing duty order for all entries subject to suspension of liquidation under paragraph (a)(1) of this section and instruct the Customs Service to require for each entry of the merchandise suspended under this paragraph a cash deposit equal to the estimated net subsidy determined in the affirmative final determination; (4) Notify all persons who are or were parties to the proceeding, the Commission if appropriate, and if the Secretary determines that the violation was intentional, the Commissioner of Customs; and (5) Publish in the Federal Register notice of “Countervailing Duty Order (Resumption of Countervailing Duty Investigation): Cancellation of Suspension Agreement.”

(b) Determination after notice and comment. (1) Notwithstanding paragraph (a) of this section, if the Secretary has reason to believe that the signatory government or exporters have violated an agreement or that an agreement no longer meets the requirements of section 704(d)(1) of the Act, the Secretary will publish in the Federal Register notice of “Invitation for Comment on Countervailing Duty Suspension Agreement.”

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

(i) If the Secretary determines that the suspension agreement or exporters have violated the agreement, take appropriate action as described in paragraphs (a)(1) through (a)(5) of this section; or

(ii) If the Secretary determines that the agreement no longer meets the requirements of section 704(d)(1) of the Act:

(A) Take appropriate action as described in paragraphs (a)(1) through (a)(5) of this section, except that, for paragraph (a)(1)(ii) of this section, the date shall be the date of first entry, or withdrawn from warehouse, for consumption of the merchandise the sale or export of which does not meet the requirements of section 704(d)(1) of the Act;

(B) Continue the suspension of investigation by accepting a revised suspension agreement under § 355.18(b) (whether or not the Secretary accepted a revised agreement under that paragraph) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) of the Act, and publish in the Federal Register notice of “Revision of Agreement Suspending Countervailing Duty Investigation;” or

(C) Continue the suspension of investigation by accepting a revised suspension agreement under § 355.18(b) (whether or not the Secretary accepted the original agreement under that paragraph) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) of the Act, and publish in the Federal Register notice of “Revision of Agreement Suspending Countervailing Duty Investigation.” If the Secretary continues to suspend an investigation based on a revised agreement accepted under § 355.18(b), the Secretary will order suspension of liquidation to begin. The suspension will not end until the Commission completes an requested review of the agreement under section 704(h) of the Act. If the Commission receives no request for review within 20 days after the date of publication of the notice of the revision, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication, and will instruct the Customs Service to release any cash deposit or bond. If the Commission undertakes a review under section 704(h) of the Act, the provisions of § 355.18(b)(4) will apply.

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

(c) Additional signatories. If the Secretary decides that the agreement no longer meets the requirements of § 355.18(b)(1)(iii) or that the signatory exporters no longer account for substantially all of the merchandise, the Secretary may revise the agreement to include additional signatory exporters.

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

§ 355.20 - Final determination.

(a) In general. (1) Not later than 90 days after the date of the Secretary’s preliminary determination, the Secretary will make a final determination whether a net subsidy is being provided with respect to the merchandise.

(2) The Secretary’s determination will include:

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

(ii) The estimated net subsidy, if any, stated on a country-wide basis, except as provided in paragraph (d) or (e) of this section; and

(iii) If appropriate, a final finding on critical circumstances under § 355.16.

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

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

(ii) If the merchandise is from a country not entitled to an injury test for the merchandise, instruct the Customs Service to require a cash deposit, as provided in § 355.21(b), for each suspended entry of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the countervailing duty order under § 355.21; or

(iii) If the merchandise is from a country entitled to an injury test for the merchandise, instruct the Customs Service to require, for each suspended entry of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the Secretary’s final determination, a cash deposit or bond equal to the estimated net subsidy determined under paragraph (a) of this section.

(4) The Secretary will publish in the Federal Register notice of “Affirmative (Negative) Final Countervailing Duty Determination,” including the estimated net subsidy, if any.

(5) The Secretary will notify all parties to the proceeding. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will also notify the Commission.

(b) Postponement to investigate upstream subsidies. (1) Any interested party shall submit a written request for postponement to investigate upstream subsidies not later than 30 days before the scheduled date for the Secretary’s final determination under this part.

(2) If the Secretary determines that an upstream subsidy allegation and concludes that additional
time is needed to investigate the allegation, the Secretary may:

(i) If the Secretary's preliminary determination was negative, postpone the final determination under this section to not later than 165 days after the preliminary determination;

(ii) If the Secretary's preliminary determination was affirmative:

(A) Postpone the final decision concerning upstream subsidization until the conclusion of the first administrative review of a countervailing duty order, if any; or

(B) At the written request of the petitioner:

(i) Postpone the decision concerning upstream subsidization in the final determination under this section;

(ii) Postpone the final determination to no later than 165 days after the preliminary determination; and

(iii) Except in the case of an order liquidation ordered in the preliminary determination not later than 120 days after the date of publication of the preliminary determination, and not resume it unless and until the Secretary publishes a countervailing duty order.

(C) At the Secretary's decision, between the final determination and will publish in the Federal Register notice of "Postponement of Final Countervailing Duty Determination" stating the reason for the postponement.

(c) Postponement for simultaneous investigations. (1) If the Secretary simulates an antidumping and countervailing duty investigations on the merchandise (from the same or other countries), the Secretary will:

(i) At the petitioner's request, postpone the final determination under this part to the date of the final determination under Part 353, unless the Secretary's final determination under this part is due on a later date as the result of postponement under paragraph (b) of this section or § 355.15; and

(ii) If the Secretary postpones the final determination, and any suspension of liquidation ordered in the preliminary determination not later than 120 days after the date of publication of the preliminary determination, and not resume it unless and until the Secretary publishes a countervailing duty order.

(2) The petitioner shall submit any such request in writing not later than 10 days before the scheduled date for the Secretary's final determination under this part.

(3) If the Secretary decides to postpone the final determination under this part, the Secretary will notify all parties to the proceeding not later than 120 days after the final determination under Part 353, unless the Secretary finds did not receive the order any producer or exporter that request disclosure a further explanation of the calculation methodology used in making the determination.

§ 355.21 Countervailing duty order.

Not later than seven days after receipt of notice of the Commission's affirmative final determination under section 705 of the Act, or simultaneously with publication of the Secretary's affirmative final determination if the merchandise is from a country not entitled to an injury test for the merchandise, the Secretary will publish in the Federal Register a "Countervailing Duty Order" that:

(a) Instructs the Customs Service to assess countervailing duties on the merchandise, in accordance with the Secretary's instructions at the conclusion of each administrative review requested under § 355.22(a) or, if not requested, in accordance with the Secretary's instructions under § 355.22(g);

(b) For each entry of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the order, instructs the Customs Service to require a cash deposit of estimated countervailing duties equal to the net subsidy stated in the Secretary's final determination;

(c) Excludes from the application of the order any producer or exporter that the Secretary finds did not receive the order directly or indirectly, during the period for which the Department measured benefits in the investigation, any net subsidy from any program that the Secretary determines countervailable in the affirmative final determination, the Secretary will state in the affirmative final determination an individual rate for that person, that rate will be the basis for the cash deposit or bond, as appropriate, of estimated countervailing duties for that person. The individual rate, calculated in accordance with paragraph (d) of this section, will be either the weighted-average net subsidy calculated on a country-wide basis or the individual rate calculated for that person.

(i) Commission access to information. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding all information upon which the Secretary based the final determination and which the Commission may consider relevant to its injury determination.

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

(b) Disclosure. Promptly after making the final determination, the Secretary will provide to parties to the proceeding which request disclosure of a further explanation of the calculation methodology used in making the determination
Commission’s final determination, and instructs the Customs Service to release the cash deposit or bond on those entries, if in its final determination, the Commission found a threat of material injury or material retardation of the establishment of an industry, unless the Commission in its final determination also found that, absent the suspension of the proceedings, it would have found material injury.

§ 355.22 Administrative review of orders and suspension agreements.

(a) Request for administrative review; withdrawal of request for review.

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

(2) During the same month, a producer or exporter covered by an order may request in writing that the Secretary conduct an administrative review of only that person if the person submits with the request:

(i) The person’s certification that the person did not apply for or receive any net subsidy on the merchandise, during the appropriate period described in paragraph (b) of this section, from any program that the Secretary previously found countervailable in the proceeding, and that the person will not do so in the future;

(ii) The certification of the government of the affected country that the government did not provide to that person any net subsidy, during the period described in paragraph (b) of this section, from any program that the Secretary previously found countervailable in the proceeding; and

(iii) If the person is not the producer of the merchandise, the certifications under paragraph (a)(2)(i) of this section of the suppliers and producers of the merchandise and the certification under paragraph (a)(2)(ii) of this section of the government regarding those suppliers and producers.

(3) The Secretary may permit a party that requests a review under paragraph (a) of this section to withdraw the request for review and the bond on those entries after the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. When a request for review is withdrawn, the Secretary will publish in the Federal Register notice of “Termination of Countervailing Duty Administrative Review” or, if appropriate, “Partial Termination of Countervailing Duty Administrative Review.”

(b) Period under review.

(1) Except as provided in paragraph (b)(2), an administrative review under (a) of this section normally will cover entries or exports of the merchandise during the most recently completed reporting year of the government of the affected country.

(2) For requests received during the first anniversary month after publication of an order or suspension of investigation, the review under paragraph (a) of this section will cover entries or exports, as appropriate, during the period from the date of suspension of liquidation under this part or suspension of investigation to the end of the most recently completed reporting year of the government of the affected country.

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

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

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

(3) Conduct, if appropriate, a verification under § 355.36;

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

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

(ii) The net subsidy, if any, and the estimated net subsidy for cash deposit purposes, and an invitation for argument consistent with § 355.38, and notify all parties to the proceeding;

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

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

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

(ii) The net subsidy, if any, during the period of review stated on a country-wide basis, except as provided in paragraph (d) or (f) of this section;

(iii) A description of official changes in the subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the cash deposit of estimated countervailing duties; and

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

(7) Publish in the Federal Register notice of “Final Results of Countervailing Duty Administrative Review,” including the net subsidy, if any, and the estimated net subsidy for cash deposit purposes, and notify all parties to the proceeding;

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

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

(10) Promptly after publication of the notice of final results, instruct the Customs Service to assess countervailing duties on the merchandise described in paragraph (b) of this section and to collect a cash deposit of estimated countervailing duties on future entries. Both the assessment and the cash deposit will be based on the rates found in the final results of review, calculated on a country-wide basis, except as provided in paragraph (d) or (f) of this section.

Calculation of the individual rates.

(1) If a producer or exporter is government-owned, the Secretary will, and to the extent practicable for other producers or exporters the Secretary may, review whether a significant differential existed, during the period under review, between the net subsidy received by an individual producer or exporter of the merchandise and the weighted-average net subsidy calculated on a country-wide basis.

(2) If the Secretary decides that an individual (including government-
owned) producer or exporter received a significantly different net subsidy during the period, the Secretary will state in the final results an individual rate for that person, and that rate will be the basis for the assessment of countervailing duties and, except as provided in paragraph (c)(7)(ii) of this section, the cash deposit of estimated countervailing duties for that person.

(3) A significant differential is:

(i) A difference of the greater of at least five percentage points, or 25 percent, from the weighted-average net subsidy calculated on a country-wide basis; or

(ii) The difference between a net subsidy of zero (or de minimis) and any rate greater than de minimis.

(e) Possible cancellation or revision of suspension agreement. If during an administrative review the Secretary determines or has reason to believe that the signatory foreign government or exporters have failed to comply with the suspension agreement or that the agreement no longer meets the requirements of §355.19, the Secretary will take appropriate action under §355.19. The Secretary may suspend the time limit in paragraph (c)(7) of this section while the suspension agreement is reviewed.

(f) Review of individual producer or exporter. For an administrative review requested under paragraph (a)(2) of this section:

(1) The Secretary will verify whether there is a net subsidy on the merchandise covered by the request for an administrative review program that the Secretary:

(i) Previously found countervailable in the proceeding; or

(iv) Determines in the review to be countervailable.

(2) If the Secretary verifies that the certifications are complete and accurate with regard to paragraph (f)(1)(i) of this section and verifies that there is no net subsidy described in paragraph (f)(1)(ii) of this section on the merchandise, the Secretary will issue and publish in the Federal Register final results for that person and take actions under paragraph (c)(9) of this section that include a rate based on the previously determined country-wide weighted-average rate.

(3) If the Secretary is unable to verify that the certifications are complete and accurate with regard to paragraph (f)(1)(i) of this section but verifies there is no net subsidy described in paragraph (f)(1)(ii) of this section on the merchandise, the Secretary will:

(i) Issue and publish final results for that person and take actions under paragraph (c)(9) of this section that include a rate based on the previously determined country-wide weighted-average rate; and

(ii) Initiate an administrative review under paragraphs (b) and (c) of this section for the person and exporters covered by the order, unless the Secretary is concurrently reviewing the same period as a result of a request under paragraph (a)(1) of this section.

(4) If the Secretary is unable to verify that the certifications are complete and accurate with regard to paragraph (f)(1)(i) of this section but verifies there is no net subsidy described in paragraph (f)(1)(ii) of this section on the merchandise, the Secretary will:

(i) Issue and publish final results for that person and take actions under paragraph (c)(9) of this section that include a rate based on the previously determined country-wide weighted-average rate; and

(ii) Initiate an administrative review under paragraphs (b) and (c) of this section for the person and exporters covered by the order, unless the Secretary is concurrently reviewing the same period as a result of a request under paragraph (a)(1) of this section.

(g) Automatic assessment of duty.

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

(2) If the Secretary receives a timely request under paragraph (a)(2) of this section and no request under paragraph (a)(1) of this section, the Secretary in accordance with paragraph (g)(1) of this section will instruct the Customs Service to assess countervailing duties, and to continue to collect the cash deposits, on the merchandise not covered by the request.

(h) Changed circumstances review.

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

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

(ii) Notify all appropriate interested parties or a sample of interested parties questionnaires requesting factual information for the review.

(2) If the Secretary receives a timely request under this paragraph requiring a review, the Secretary will:

(i) Conduct, if appropriate, a verification under §355.36;

(2) If the Secretary is unable to verify that the certifications are complete and accurate with regard to paragraph (f)(1)(i) of this section but verifies there is no net subsidy described in paragraph (f)(1)(ii) of this section on the merchandise, the Secretary will:

(i) Issue and publish final results for that person and take actions under paragraph (c)(9) of this section that include a rate based on the previously determined country-wide weighted-average rate; and

(ii) Initiate an administrative review under paragraphs (b) and (c) of this section for the person and exporters covered by the order, unless the Secretary is concurrently reviewing the same period as a result of a request under paragraph (a)(1) of this section.

(4) If the Secretary is unable to verify that the certifications are complete and accurate with regard to paragraph (f)(1)(i) of this section, if the Secretary is concurrently reviewing the same period as a result of a request under paragraph (a)(1) of this section, the Secretary will state in the final results an individual rate for that person and take actions under paragraph (c)(9) of this section.

(f) Review of individual producer or exporter. For an administrative review requested under paragraph (a)(2) of this section:

(1) The Secretary will verify whether there is a net subsidy on the merchandise covered by the request for an administrative review program that the Secretary:

(i) Previously found countervailable in the proceeding; or

(iv) Determines in the review to be countervailable.

(2) If the Secretary verifies that the certifications are complete and accurate with regard to paragraph (f)(1)(i) of this section and verifies that there is no net subsidy described in paragraph (f)(1)(ii) of this section on the merchandise, the Secretary will issue and publish in the Federal Register final results for that person and take actions under paragraph (c)(9) of this section that include a rate based on the net subsidies found and
proceeding which request disclosure a further explanation of the final results.
(2) Changed circumstances reviews may be requested at any time, including periods other than anniversary months.
(3) The Secretary will not initiate an administrative review under paragraph (h) of this section before the end of the second annual anniversary month (the calendar month in which the anniversary of the date of publication of the order or suspension occurs) after the date of publication of the Secretary’s affirmative preliminary determination or suspension of investigation, unless the Secretary finds that good cause exists.
(4) If the Secretary concludes that expedited action is warranted, the Secretary may combine the notices identified in paragraphs (h)(1)(i) and (h)(1)(iv) of this section in a notice of “Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review.” In that event, the notification required in paragraph (h)(1)(vi) of this section will be given to all interested parties included on the Department’s service list described in §355.31(b).
(i) Revocation at the direction of the President. At the direction of the President or a designee, the Secretary will conduct an administrative review to determine if a net subsidy is being provided with respect to the merchandise subject to an understanding or other kind of quantitative restriction agreement accepted under §355.17(b) or §355.16(b)(9). The Secretary will:
(1) Publish in the Federal Register notice of “Initiation of Countervailing Duty Administrative Review at the Direction of the President,” which will include a description of the merchandise, the period under review, and a summary of the available information which would, if accurate, support the imposition of countervailing duties;
(2) Notify the Commission;
(3) Send to appropriate interested parties or a sample of interested parties, a description of official changes in the subsidy programs made by the government of the affected country that affect the estimated net subsidy;
(4) Conduct, if appropriate, a verification under §355.36;
(5) Issue preliminary results of review, based on the available information, that include:
(i) The factual and legal conclusions on which the preliminary results are based;
(ii) The net subsidy, if any, during the period of review stated on a country-wide basis, except as provided in paragraph (d) of this section; and
(iii) A description of official changes in the subsidy programs made by the government of the affected country that affect the estimated net subsidy;
(6) Publish in the Federal Register notice of “Preliminary Results of Countervailing Duty Administrative Review at the Direction of the President,” including the net subsidy, if any, the estimated net subsidy for cash deposit purposes, and an invitation for argument consistent with §355.38;
(7) Notify the Commission and all parties to the proceeding;
(8) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the preliminary results;
(9) Issue final results of review that include:
(i) The factual and legal conclusions on which the final results are based;
(ii) The net subsidy, if any, during the period of review stated on a country-wide basis, except as provided in paragraph (d) of this section; and
(iii) A description of official changes in the subsidy programs made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the estimated net subsidy;
(10) Publish in the Federal Register notice of “Final Results of Countervailing Duty Administrative Review at the Direction of the President,” including the net subsidy, if any, and the estimated net subsidy for cash deposit purposes; and
(11) Notify all parties to the proceeding;
(12) Promptly after issuing the final results, provide to parties to the proceeding which request disclosure a further explanation of the final results; and
(13) If the Secretary’s final results of administrative review under paragraph (1)(9) of this section and the Commission’s final results of review under section 772(a)(2) of the Act are affirmative:
(i) Publish in the Federal Register a “Countervailing Duty Order” under §355.21 on or promptly after the date the agreement terminates; and
(ii) Order the suspension of liquidation or release of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the countervailing duty order.
§355.23 Provisional measures deposit cap.
This section applies to the merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission’s notice of affirmative final determination or, if the merchandise is from a country not entitled to an injury test for the merchandise, the date of the Secretary’s notice of affirmative final determination. If the cash deposit or bond required under the Secretary’s affirmative preliminary or affirmative final determination is different from the net subsidy the Secretary calculates under §355.22, the Secretary will instruct the Customs Service to disregard the difference to the extent that the cash deposit or bond is less than the net subsidy, and to assess countervailing duties equal to the net subsidy calculated under §355.22 if the cash deposit or bond is more than the net subsidy.
§355.24 Interest on certain overpayments and underpayments.
(a) In general. The Secretary will instruct the Customs Service to pay or collect, as appropriate, interest on the difference between the cash deposit of estimated countervailing duties and the assessed countervailing duties on entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of a countervailing duty order.
(b) Rate. The rate or rates of interest payable or collectible under paragraph (a) of this section for any period of time are the rates established under section 6621 of the Internal Revenue Code of 1954.
(c) Period. The Secretary will instruct the Customs Service to calculate interest for each entry from the date that a cash deposit is required to be deposited for the entry through the date of liquidation of the entry.
§355.25 Revocation of orders; termination of suspended investigation.
(a) Revocation or termination based on absence of subsidy. (1) The Secretary may revoke an order or terminate a suspended investigation if the Secretary concludes that:
(i) The government of the affected country has eliminated all subsidies on the merchandise by abolishing the subsidy programs, for a period of at least three consecutive years, all programs that the Secretary has found countervailable; and
(ii) It is not likely that the government of the affected country will in the future reestablish the subsidy programs or substitute other countervailable programs.

(2) The Secretary may revoke an order or terminate a suspended investigation if the Secretary concludes that:
(i) All producers and exporters covered at the time of revocation by the order or the suspension agreement have not applied for or received any net subsidy on the merchandise for a period of at least five consecutive years; and
(ii) It is not likely that those persons will in the future apply for or receive any net subsidy on the merchandise from those programs the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs.
(3) The Secretary may revoke an order in part if the Secretary concludes that:
(i) One or more producers or exporters covered by the order have not applied for or received any net subsidy on the merchandise for a period of at least five consecutive years;
(ii) It is not likely that those persons will in the future apply for or receive any net subsidy on the merchandise from those programs the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs; and
(iii) Except for producers or exporters that the Secretary previously has determined have not received any net subsidy on the merchandise, the producers or exporters agree in writing to their immediate reinstatement in the order, as long as any producer or exporter is subject to the order, if the Secretary concludes under § 355.22(b) that the producer or exporter, subsequent to the revocation, has received any net subsidy on the merchandise.

(b) Request for revocation or termination. (1) During the third and subsequent annual anniversary months of the publication of an order or suspension of investigation (the calendar month in which the anniversary of the date of publication of the order or suspension occurs), the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (a)(2) of this section if the government submits with the request:
(i) The certifications required under § 355.22(a)(2) for all producers and exporters covered by the order or suspension agreement; and
(ii) Those producers' and exporters' certifications that they shall not apply for or receive any net subsidy on the merchandise from any program described in paragraph (a)(2)(ii) of this section.
(3) During the fifth and subsequent annual anniversary months of publication of an order or suspension of investigation, a producer or exporter may request in writing that the Secretary revoke an order with regard to that person if the person submits with the request:
(i) The certifications required under § 355.22(a)(2);
(ii) The certifications described in paragraph (b)(2)(ii) of this section for the merchandise covered by the request; and
(iii) The agreement described in paragraph (a)(3)(iii) of this section.
(c) Procedures. (1) After receipt of a timely request under paragraph (b) of this section, the Secretary will consider the request as including a request for an administrative review and will conduct a review under § 355.22(c).
(2) In addition to the requirements of § 355.22(c), the Secretary will:
(i) Publish with the notice of initiation, under § 355.22(c)(1), notice of "Request for Revocation of Order (in Part)" or, if appropriate, "Request for Termination of Suspended Investigation;"
(ii) Conduct a verification under § 355.36;
(iii) Include in the preliminary results of review, under § 355.22(c)(4), the Secretary's decision whether there is a reasonable basis to believe that the requirements for revocation or termination are met;
(iv) If the Secretary's preliminary decision under paragraph (c)(3)(iii) of this section is affirmative, publish with the notice of preliminary results of review under § 355.22(c)(5), notice of "Intent to Revoking Order (in Part)" or, if appropriate, "Intent to Terminate Suspended Investigation;"
(v) Include in the final results of review, under § 355.22(c)(7), the Secretary's final decision whether the requirements for revocation or termination are met; and
(vi) If the Secretary's final decision under paragraph (c)(5)(v) of this section is affirmative, publish with the notice of final results of review under § 355.22(c)(6), notice of "Revocation of Order (in Part)" or, if appropriate, "Termination of Suspended Investigation."
(3) If the Secretary revokes an order or revokes an order in part, the Secretary will order the suspension of liquidation ended for the merchandise covered by the revocation on the first day after the period under review.

(d) Revocation or termination based on changed circumstances. (1) The Secretary may revoke an order or terminate a suspended investigation if the Secretary concludes that:
(i) The order or suspended investigation no longer is of interest to interested parties, as defined in paragraphs (i)(3), (i)(4), (i)(5), and (i)(6) of § 355.2; or
(ii) Other changed circumstances sufficient to warrant revocation or termination exist.
(2) If at any time the Secretary concludes from the available information, including an affirmative statement of no interest from the petitioner in the proceeding, that changed circumstances sufficient to warrant revocation or termination may exist, the Secretary will conduct an administrative review under § 355.22(b).
(3) In addition to the requirements of § 355.22(h), the Secretary will:
(i) Publish with the notice of initiation, under § 355.22(h)(1)(i), notice of "Consideration of Revocation of Order (in Part)" or, if appropriate, "Consideration of Termination of Suspended Investigation;"
(ii) If the Secretary's conclusion, as described in paragraph (d)(2) of this section, is not based on a request, the Secretary, not later than the date of publication of the notice described in paragraph (d)(2)(i) of this section, will serve written notice of the consideration of revocation or termination on each interested party listed on the Department's service list and on any other person which the Secretary has reason to believe is a producer or seller in the United States of the like product; and
(iii) Conduct a verification, if appropriate, under § 355.36;
(iv) Include in the preliminary results of review, under § 355.22(h)(1)(iv), the Secretary's decision whether there is a reasonable basis to believe that the requirements for revocation or termination are met; and
(v) If the Secretary's preliminary decision under paragraph (d)(3)(iii) of this section is affirmative, publish with the notice of preliminary results of review under § 355.22(h)(1)(v), the Secretary's final decision whether the requirements for revocation or termination are met; and
(vi) If the Secretary's final decision under paragraph (d)(5)(v) of this section is affirmative, publish with the notice of final results of review under § 355.22(h)(1)(vi), the Secretary's decision whether the requirements for revocation or termination are met.
review, under § 355.22(b)(1)(v), notice of "Intent to Revoke Order (in Part)" or, if appropriate, "Intent to Terminate Suspended Investigation.

(vi) Include in the final results of review, under § 355.22(h)(1)(vii), the Secretary's final decision whether the requirements for revocation or termination based on changed circumstances are met; and

(vii) If the Secretary's final decision under paragraph (d)(5)(vii) of this section is affirmative, publish with the notice of final results of review, under § 355.22(h)(1)(ix), a notice of "Revocation of Order (in Part)" or, if appropriate, "Termination of Suspended Investigation."

(4)(i) If for four consecutive annual anniversary months no interested party has requested an administrative review, under § 355.22(a), of an order or suspended investigation, not later than the first day of the fifth consecutive annual anniversary month, the Secretary will publish in the Federal Register notice of "Intent to Revoke Order" or, if appropriate, "Intent to Terminate Suspended Investigation."

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

(iii) If for one day of the fifth annual anniversary month no interested party objects, or requests an administrative review under § 355.22(a), the Secretary at that time will conclude that the requirements of paragraph (d)(4)(i) of this section for revocation or termination are met, revoke the order or terminate the suspended investigation, and publish in the Federal Register the notice described in paragraph (d)(4)(i) of this section.

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

(e) Revocation or termination based on injury reconsideration. If the Commission determines in an administrative review under section 751(b) of the Act that an industry in the United States would not be materially injured, or would not be threatened with material injury, or the establishment of an industry in the United States would in no event will the Secretary consider unsolicited questionnaire responses submitted after the date of publication of the Secretary's preliminary determination. The Secretary will return to the submitter, with written notice stating the reasons for return of the document, any untimely or unsolicited questionnaire responses rejected by the Department.

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

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

(c) Time limits for certain allegations.

(1) Except for an allegation of upstream subsidies submitted in an investigation (see §§ 355.15(d) and 355.20(b)), the Secretary will not consider any subsidy allegation submitted by the petitioner or other interested party, as defined in paragraphs (i)(1) or (i)(2) of § 355.2, at any time prior to the deadline provided in this section for submission of such factual information or, if, later than 10 days after the date such factual information is served on the interested party, or, if appropriate, made available under administrative protective order to the interested party.

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

(b) Questionnaire responses and other submissions on request.

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

(2) In the Secretary's written request to an interested party for a response to a questionnaire or for other factual information, the Secretary will specify the time limit for response. The Secretary normally will not consider or retain in the record of the proceeding unsolicited questionnaire responses, and

Subpart C—Information and Argument

§ 355.31 Submission of factual information.

(a) Time limits in general.

(i) Except as provided in paragraphs (a)(2) and (b) of this section, submissions of factual information for the Secretary's consideration shall be submitted not later than:

(A) For the Secretary's final determination, the day before the scheduled date on which the verification is to commence.

(B) For the Secretary's final results of an administrative review, the earlier of the date of publication of notice of preliminary results of review or 180 days after the date of publication of notice of initiation of the review.

(ii) Any interested party, as defined in paragraphs (i)(3), (i)(4), (i)(5), and (i)(6) of § 355.2, may submit factual information to rebut, clarify, or correct factual information submitted by an interested party, as defined in paragraph (i)(1) or (i)(2) of § 355.2, at any time prior to the deadline provided in this section for submission of such factual information or, if, later than 10 days after the date such factual information is served on the interested party, or, if appropriate, made available under administrative protective order to the interested party.

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

(iv) The Secretary may approve an extension: the Assistant Secretary for Import Administration, the Deputy Assistant Secretary for Import Administration, the Deputy Assistant Secretary for Investigations, the Deputy Assistant Secretary for Compliance, and the office or division director responsible for the proceeding. An extension must be approved in writing.

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

(2) The Secretary will not consider any allegation in an investigation that the petitioner lacks standing unless the petition is affirmatively published in the Federal Register notice of "Intent to Revoke Order" or, if appropriate, "Termination of Suspended Investigation."

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

(e) Revocation or termination based on injury reconsideration. If the Commission determines in an administrative review under section 751(b) of the Act that an industry in the United States would not be materially injured, or would not be threatened with material injury, or the establishment of an industry in the United States would
days in an investigation or 30 days in an
administrative review.

Released on file; time of filing.
Address and submit documents to the
Secretary of Commerce, Attention:
Import Administration, Central Records
Unit, Room B-096, U.S. Department
of Commerce, Pennsylvania Avenue and
14th St., NW., Washington, DC 20230,
between the hours of 8:30 a.m. and
5:00 p.m. on business days. For all time limits
in this part, the Secretary will consider
documents received when stamped by
the Central Records Unit with the date
and time of receipt. If the time limit
expires on a non-business day, the
Secretary will accept documents that
are filed on the next following business
day.

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

(2) Documents. In an investigation,
submit 10 copies of any document,
except a computer printout, and, if
a person has requested that the Secretary
accept for the record of the proceeding
any unnumbered pages; (3) Computer tapes and printouts. The
Secretary may require submission of
factual information on computer tape
unless the Secretary decides that the
submitter does not maintain records in
computerized form and cannot supply
the requested information on computer
tape without unreasonable additional
burden in time and expense. In an
investigation or administrative review,
the tape shall be accompanied by three
copies of any computer printout and
three copies of the public version of the
printout.

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

(g) Service of copies on other parties.
With the exception of petitions,
proposed suspension agreements
submitted under § 355.18(a)(1)(i), and
factual information submitted under
§ 355.32(a) that is not required to be
served on an interested party, the
submitter of a document shall serve a
copy, by first class mail or personal
service, on the government of the
affected country and any interested
party on the Department's service list.
The submitter shall attach to each
document a certificate of service listing
the parties served and, for each, the
date and method of service.

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

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

(1) For the interested party's official
responsible for presentation of the
factual information: "I, [name and title],
currently employed by [interested
party], certify that (1) I have read the
attached submission, and (2) the
information contained in this
submission is, to the best of my
knowledge, complete and accurate."
(2) For interested party's legal counsel
or other representative: "[name], of
[law or other firm], counsel or
representative to [interested party],
certify that (1) I have read the attached
submission, and (2) based on the
information made available to me by
[interested party], I have no reason to
believe that this submission contains
any material misrepresentation or
omission of fact."

§ 355.32 Request for proprietary
treatment of information.

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

(2) The submitter shall identify
proprietary information on each page by
placing brackets around the proprietary
information and clearly stating at the
top of each page "Proprietary Treatment
Requested." The submitter shall provide
a full explanation why each piece of
factual information subject to the
request is entitled to proprietary
treatment under § 355.4. The request and
explanation shall be a part of or
securely bound with the document
containing the information.

(b) Public summary. All requests for
proprietary treatment shall include or be
accompanies by:

(1) An adequate public summary of all
proprietary information, incorporated in
the public version of the document
generally, numeric data are adequately
summarized if grouped or presented in
terms of indices, or figures within 10
percent of the actual figure, and if an
individual portion of the data is
voluminous, at least one percent
representative of that portion is
individually summarized in this
manner; or

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

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

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

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

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

(1) A representative of an interested party who requests and is granted an administrative protective order under §355.34;
(2) An employee of the Department directly involved in the proceeding for which the information is submitted;
(3) An employee of the Commission directly involved in the proceeding for which the information is submitted;
(4) An employee of the Customs Service directly involved in conducting a fraud investigation relating to a countervailing duty proceeding on the merchandise;
(5) Any person to whom the submitter specifically authorizes (in writing) disclosure; and
(6) A charged party or counsel for the charged party under Part 354 of this title (19 CFR Part 354).

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

§355.33 Information exempt from disclosure.

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

§355.34 Disclosure of proprietary information under administrative protective order.

(a) In general. The Secretary may disclose, or require to be disclosed, proprietary information under an administrative protective order to an attorney or other representative of a party to the proceeding if the Secretary decides that the representative has stated a sufficient need for disclosure and would adequately protect the proprietary status of the information disclosed. In deciding whether to disclose information under administrative protective order, the Secretary will consider the probable effectiveness of sanctions for violation of the order, including those described in paragraph (b)(4) of this section. The Secretary also will consider the ability of the Secretary to obtain factual information in the future.

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

(i) 30 days after the date of publication in the Federal Register of the notice of initiation under §355.11 or §355.13, or the notice of initiation of administrative review under §355.22; or
(ii) 10 days after the date the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under §355.30, are due.

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

(3) The request shall obligate the representative:

(i) Not to disclose the proprietary information to anyone other than the submitter and other persons authorized to have access to the Information;
(ii) To use the information solely for the segment of the proceeding in which it was submitted;
(iii) To ensure the security of the proprietary information at all times; and
(iv) To report promptly to the Secretary any apparent violation of the terms of the protective order.

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

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

(5) The Secretary normally will decide whether to disclose information under administrative protective order not later than 14 days after the Secretary receives the request for disclosure.

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

(d) Disposition of proprietary information disclosed under administrative protective order. (1) At the expiration of the time for filing for judicial review of a decision by the Secretary, if there is no filing by any party to the proceeding, or at an earlier date the Secretary determines that the representative must return or destroy all proprietary information released under this section and all other materials containing the proprietary information.

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

(iii) To ensure the security of the proprietary information at all times; and
grant a request for disclosure under administrative protective order.

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

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

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

1. A representative of an interested party who requests and is granted an administrative protective order under §355.34;
2. An employee of the Department directly involved in the proceeding for which the information is submitted;
3. An employee of the Commission directly involved in the proceeding for which the information is submitted;
4. An employee of the Customs Service directly involved in conducting a fraud investigation relating to a countervailing duty proceeding on the merchandise;
5. Any person to whom the submitter specifically authorizes (in writing) disclosure; and
6. A charged party or counsel for the charged party under Part 354 of this title (19 CFR Part 354).

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

§355.33 Information exempt from disclosure.

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

§355.34 Disclosure of proprietary information under administrative protective order.

(a) In general. The Secretary may disclose, or require to be disclosed, proprietary information under an administrative protective order to an attorney or other representative of a party to the proceeding if the Secretary decides that the representative has stated a sufficient need for disclosure and would adequately protect the proprietary status of the information disclosed. In deciding whether to disclose information under administrative protective order, the Secretary will consider the probable effectiveness of sanctions for violation of the order, including those described in paragraph (b)(4) of this section. The Secretary also will consider the ability of the Secretary to obtain factual information in the future.

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

(i) 30 days after the date of publication in the Federal Register of the notice of initiation under §355.11 or §355.13, or the notice of initiation of administrative review under §355.22; or

(ii) 10 days after the date the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under §355.30, are due.

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

(3) The request shall obligate the representative:

(i) Not to disclose the proprietary information to anyone other than the submitter and other persons authorized to the Information;

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

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

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

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

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

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

(5) The Secretary normally will decide whether to disclose information under administrative protective order not later than 14 days after the Secretary receives the request for disclosure.

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

(d) Disposition of proprietary information disclosed under administrative protective order. (1) At the expiration of the time for filing for judicial review of a decision by the Secretary, if there is no filing by any party to the proceeding, or at an earlier date the Secretary, if there is a filing by any party to the proceeding, or at an earlier date the Secretary determines that the information is not subject to the protective order, the representative must return or destroy all proprietary information released under this section and all other materials containing the proprietary information (such as notes or memoranda). The representative at that time must certify to the Secretary full compliance with the terms of the protective order and the return or destruction of all proprietary information.

(2) The representative of a party to the proceeding that files for judicial review or intervenes in the judicial review may retain the protective order, provided that the party applies for a court protective order for the information and obtains a court protective order, the representative must return or destroy the proprietary information and all other materials containing the proprietary information. If the court denies the party's application for a court protective order, the representative must return or destroy the proprietary information and all other materials containing the proprietary information.
§ 355.35 Ex parte meeting.

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

§ 355.36 Verification of information.

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

(i) A final determination under § 355.18(l) or § 355.20;

(ii) A revocation under § 355.25;

(iii) The final results of an administrative review under § 355.22(c); (h), or (i) if the Secretary decides that good cause for verification exists; and

(iv) The final results of an administrative review under § 355.22(c) if:

(A) An interested party, as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, not later than 120 days after the date of publication of the notice of initiation of review, submits a written request for verification; and

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

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

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

(c) Procedures for verification. In verifying under this section, the Secretary will notify the government of the affected country in which verification takes place that employees of the Department will visit with producers, exporters, or government agencies in order to verify the accuracy and completeness of submitted factual information. As part of the verification, employees of the Department will request access to all files, records, and personnel of the producers, exporters, or government agencies which the Secretary considers relevant to factual information submitted by those persons.

§ 355.37 Best information available.

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

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

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

(b) What is best information available. The best information available may include the factual information submitted in support of the petition or subsequently submitted by interested parties, as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2. If an interested party refuses to provide factual information requested by the Secretary, or otherwise impedes the proceedings, the Secretary may take that into account in determining what is the best information available.

§ 355.38 Written argument and hearings.

(a) Written argument. The Secretary will consider in making the final determination under § 355.18(l) or § 355.20 or the final results under § 355.22 only written arguments in case or rebuttal briefs filed within the time limits in this section. The Secretary will not consider or retain in the record of the proceeding any written argument, unless requested by the Secretary and received within the time limit specified by the Secretary, that is submitted after the time limits specified in this section. At any time during the proceeding, the Secretary may request written argument on any issue from any interested party or United States Government agency. The Secretary will return to the submitter, with written notice stating the reasons for return of the document, any written argument submitted after the specified time limits.

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

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

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

(ii) Not later than 30 days after the date of publication of the preliminary results of administrative review.

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

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

(e) Service of briefs. The submitter of either a case or rebuttal brief shall serve a copy of that brief on the government of the affected country, on any interested party on the Department's service list, and on any U.S. Government agency that has submitted in the segment of the proceeding a case or rebuttal brief. If the party has designated under § 355.31(b) an agent in the United States, service shall be either by personal service on the same day the brief is filed with the Secretary or by overnight mail or courier on the next day and, if the party has designated an agent outside the United
not later than 48 hours after the court's decision and certify to the Secretary as provided under paragraph [d](1) of this section.

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

§ 355.35 Ex parte meeting.

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

§ 355.36 Verification of information.

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

(i) A final determination under § 355.18(i) or § 355.20;

(ii) A revocation under § 355.25;

(iii) The final results of an administrative review under § 355.22(c), (h), or (i) if the Secretary decides that good cause for verification exists; and

(iv) The final results of an administrative review under § 355.22(c) if:

(A) An interested party, as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, not later than 120 days after the date of publication of the notice of initiation of review, submits a written request for verification; and

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

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

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

(c) Procedures for verification. In verifying under this section, the Secretary will notify the government of the affected country in which verification takes place that employees of the Department will visit with producers, exporters, or government agencies in order to verify the accuracy and completeness of submitted factual information. As part of the verification, employees of the Department will request access to all files, records, and personnel of the producers, exporters, or the government agencies which the Secretary considers relevant to factual information submitted by those persons.

§ 355.37 Best information available.

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

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

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

(b) What is best information available. The best information available may include the factual information submitted in support of the petition or subsequently submitted by interested parties, as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2. If an interested party refuses to provide factual information requested by the Secretary in the meeting, the Secretary may make a final recommendation to that person to whom the Secretary has made the final recommendation.

§ 355.38 Written argument and hearings.

(a) Written argument. The Secretary will consider in making the final determination under § 355.18(i) or § 355.20 or the final results under § 355.22 only written arguments in case or rebuttal briefs filed within the time limits in this section. The Secretary will not consider or retain in the record of the proceeding any written argument, unless requested by the Secretary (and received within the time limit specified by the Secretary), that is submitted after the time limits specified in this section.

At any time during the proceeding, the Secretary may request written argument on any issue from any interested party or United States Government agency. The Secretary will return to the submitter, with written notice stating the reasons for return of the document, any written argument submitted after the time limits specified in this section or by the Secretary.

(b) Request for hearing. Not later than 10 days after the date of publication of the Secretary's preliminary determination or preliminary results of administrative review, unless the Secretary alters this time limit, any interested party may request that the Secretary hold a public hearing on arguments to be raised in case or rebuttal briefs.

To the extent practicable, a party requesting a hearing shall identify arguments to be raised at the hearing. At the hearing, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief.

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

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

(ii) Not later than 30 days after the date of publication of the preliminary results of administrative review.

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

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

(e) Service of briefs. The submitter of either a case or rebuttal brief shall serve a copy of that brief on the government of the affected country, on any interested party on the Department's service list, and on any U.S. Government agency that has submitted in the segment of the proceeding a case or rebuttal brief. If the party has designated under § 355.31(h) an agent in the United States, service shall be either by personal service on the same day the brief is filed with the Secretary or by overnight mail or courier on the next day and, if the party has designated an agent outside the United
The Department of Agriculture, who has reason to believe
person, including the Secretary of

any changes in or additions to the

whether there are any changes or

The person shall file the
request at the time and place specified
in § 355.31(d). The request shall allege
either a change in the type or amount of
any subsidy included in the latest
annual list or quarterly update or an
additional subsidy not included in that
list or update provided by a foreign
government, and shall contain the
following, to the extent reasonably
available to the requesting person:

(1) The name and address of the
person;

(2) The article of quota cheese
allegedly benefiting from the changed
or additional subsidy;

(3) The country of origin of the article
of quota cheese; and

(4) The alleged subsidy or changed
subsidy and relevant factual information
(particularly documentary evidence)
regarding the alleged changed or
additional subsidy including the
authority under which it is provided, the
manner in which it is paid, and the value
of the subsidy to producers or exporters
of the article.

The requirements of § 355.31(d) and (f)
apply to this section.

(b) Determination. Not later than 30
days after receiving an acceptable
request, the Secretary will:

(1) In consultation with the Secretary
of Agriculture, determine based on the
available information whether there has
been any change in the type or amount
of any subsidy included in the latest
annual list or quarterly update or an
additional subsidy not included in that
list or update being provided by a
foreign government;

(2) Notify the Secretary of Agriculture
and the person making the request of the
determination; and

(3) Promptly publish in the Federal
Register notice of any changes or
additions.

§ 355.44 Complaint of price-undertcutting
by subsidized imports.

Upon receipt of a complaint filed with
the Secretary of Agriculture under
section 702(b) of the Trade Agreements
Act concerning price-undertcutting by
subsidized imports, the Secretary will
promptly determine, under § 355.43(b),
whether or not the alleged subsidies are
included in or should be added to the
latest annual list or quarterly update.
The Department of Agriculture
regulations concerning complaints of
price-undertcutting by subsidized imports
of quota cheese are published in 7 CFR
Part B.
§ 355.45 Access to information.
Subpart C of this part applies to factual information submitted in connection with this subpart.

Annex I—List of Countries Under the Agreement

1. As of the date of publication of this part, the Agreement applies between the United States and the following countries, as determined under section 2(b) of the Trade Agreements Act of 1979: Australia, Austria, Brazil, Canada, Chile, Egypt, European Economic Community (accepted for member states), Finland, United Kingdom for Hong Kong, India, Indonesia, Israel, Japan, Korea, Norway, Pakistan, Philippines, Sweden, Switzerland, Turkey, and Uruguay. See section 701(b)(1) of the Act.

2. Taiwan and Mexico have assumed obligations with respect to the United States which the President has determined are substantially equivalent to obligations under the Agreement. See section 701(b)(2) of the Act.

3. The following countries are entitled to an injury test under section 701(b)(3) of the Act: Venezuela, Honduras, Nepal, North Yemen, El Salvador, Paraguay, and Liberia.

For further information, contact the Office of Policy, Import Administration, at the address stated in § 355.31(d).

Annex II—Time Limits for Submissions Specified in this Part

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- 1 Documents are filed when stamped by the Central Records Unit of the Department of Commerce. See § 355.31(d) for hours of operation.

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