The following communication, dated 20 February 1980, has been received from the Permanent Mission of the United States.

Pursuant to the provisions of Article 16:6 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, I am submitting the attached notifications.

These are the implementing regulations concerning United States anti-dumping procedures.

A. United States International Trade Commission: Procedures for conduct of investigations of whether injury to domestic industries results from imports sold at less than fair value or from subsidized exports to the United States (19 CFR Parts 201 and 207). Published 26 December 1979;

Part III

International Trade Commission

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

19 CFR Parts 201 and 207

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


ACTION: Final rules.

SUMMARY: The Trade Agreements Act of 1979, 19 U.S.C. 1516A, and sections 102-107 of title 19, chapter II, of the Code of Federal Regulations, as amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1512, as amended, provide procedures for the conduct of Commission antidumping and countervailing duty investigations under the changes required by the Trade Agreements Act of 1979. These rules set forth procedures for the conduct of Commission investigations under section 303 and title VII of the Act, 19 U.S.C. 1671 et seq., and ruled on the withholding of confidential information under protective order. In May 1979, the Commission published in the Federal Register a Notice of Proposed Rulemaking, 44 FR 15939, proposing to add a new Part 207 to title 19, chapter II, of the Code of Federal Regulations. This proposed rulemaking was to be submitted on or before November 29, 1979. Submissions from approximately 20 interested persons and organizations were received by December 3, 1979. The submissions covered all of the areas addressed in the proposed rules, with the exception of judicial review. Many of the ideas contained in the comments have been accepted by the Commission and incorporated in its final rules; other suggestions were not adopted. The following is a summary of the proposals made in the comments received by the Commission with an explanation of why certain proposed amendments were or were not adopted. This summary has been organized in accordance with the principal subparts of the proposed rules.

Subpart A

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

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

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

Other comments on the protective order provision were directed at the Commission's proposal for the automatic release under protective order upon application by interested parties who are parties to the proceeding of domestic price and cost of production information submitted by the petitioner or an interested party in support of the petitioner. Some comments stated that this release was too automatic and that the Commission should impose a standard of need for the information to be satisfied by the requesting interested party. On the other hand, some comments suggested that the proposed protective order provision was too narrow and did not take full advantage of the statutory authorization for the Commission to release all confidential information under protective order. In responding to these comments, the Commission has decided to add a standard of need similar to that incorporated in rule 28 of the Federal Rules of Civil Procedure. Before the Secretary releases domestic price and cost of production information to an interested party, an interested party must demonstrate a substantial need for the information in the prosecution of his case and that he is unable without undue hardship to obtain the substantial equivalent of the information by other means.

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

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

Subpart B

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

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

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

Subpart C

A large number of comments were directed at what was perceived to be an excessive limitation on the submission by parties of information to the Commission subsequent to the filing of prehearing statements. The Commission has made two significant changes in its rules to respond to these comments. First, argument will be permitted at the hearing not only on points raised in the prehearing statements, but also with respect to information not available at the time the prehearing statement was filed. Second, the Commission has decided to allow posthearing briefs of a limited length within a time to be fixed at the hearing. In this way, parties will be able to respond to new controversies and information raised at the hearing.

The Commission also received comments to the effect that limiting a nonparty participant at the hearing to a "brief statement of its position with respect to the subject matter of the investigation" was overly narrow. It is the position of the Commission that such a standard is, on the contrary, extremely broad and will allow persons appearing before the Commission to bring their expertise to bear on the issues at hand.

A final comment submitted in this area concerned the unavailability of cross-examination of witnesses at the hearing. The hearing conducted by the Commission in antidumping and countervailing duty investigations is not a hearing governed by the adjudicative provisions of the Administrative Procedure Act. It is, therefore, not the intention of the Commission to change its current practice set forth in § 201.12(c), which limits questioning of witnesses to the purpose of assisting the Commission to obtain relevant and
material facts with respect to the subject matter of the investigation.

Other significant comment concerned proposed §§ 207.29 and 207.27, which interpret what the statute directs the Commission to consider in making its determinations of material injury. One group of comments suggested that because § 207.29 sets forth what constitutes material injury, a complete and balanced treatment would require the Commission to enumerate also the elements of "threat of material injury." These standards are not in the statute itself but are in the legislative history. The Commission has adopted this suggestion and amended paragraph (d) of § 207.29 to reflect the pertinent legislative history.

Other comments expressed concern that the Commission, by enumerating factors which indicate the presence of injury, might have intended to change its current practice of satisfying itself that there exists a causal relationship between subsidized or dumped imports and injury to domestic industries. These comments also suggested that the Commission make clear that the examination of such a causal relationship does not mean that the Commission will expect petitioners to assume the burden of demonstrating that their injury is not a result of factors other than the dumped or subsidized imports. Accordingly, the Commission has changed the language in its final rules to show that the Commission will continue its practice of requiring a causal relationship without weighing the causes.

Subpart D

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

Comments from several sources, including the Executive Branch, suggested that § 207.31 be amended to allow greater flexibility for the Commission in choosing the priority of injury determinations with respect to outstanding countervailing duty orders requiring such determinations.

Accordingly, this rule was amended also to allow consideration of the trade interests of the United States and the volume of trade concerned.

Subpart E

One comment read sections 704(a) and 734(a) of the Act and § 207.40(a) as literally prohibiting the Commission from terminating an investigation until the administering authority has issued a preliminary determination and suggested that this could cause the Commission to wait for an event which will never occur. The Commission, however, interprets the Act to mean that termination of an investigation by the administering authority also terminates the Commission's investigation. Any other reading of the statute would leave the Commission with no statutory basis for terminating investigations which are terminated by the administering authority prior to its preliminary determination. This clearly was not the intent of the Congress.

A comment was received to the effect that the Commission's intention to use section 603 of the Trade Act of 1974 for factfinding during investigations which are suspended as a result of agreements to eliminate injury completely is inappropriate and may cause conflict with foreign interests who believe the suspension process will remove from them all obligations to supply information to the United States Government. The Commission intends to leave its proposed rule unchanged. Commission factfinding is directed primarily at domestic markets and industries. In addition, the Commission will use procedures appropriate to avoid unnecessary conflict with our trading partners. However, it is necessary for the Commission to retain authority to keep its information up to date during the suspension of an investigation in the event that the suspension is ended and the Commission must go forward to make a determination of injury within a brief period. Another comment argued that section 603 authority is limited to matters encompassed completely within the Trade Act of 1974. The Commission disagrees and reads section 603 more broadly. Section 332 of the Tariff Act of 1930 also delegates investigative powers to the Commission.

As proposed, § 207.41 sets forth the scope of investigations to review agreements to eliminate completely injury caused by subsidized or lesser-than-fair-value imports. Proposed § 207.43 provided that the Commission, in making determinations in such investigations, would consider all of the merchandise subject to investigation without regard to the agreement. Because complete elimination of injurious effects suggests that all of the merchandise subject to the investigation must be covered by the agreement, a review "without regard to the agreement" would appear to be impossible; thus, §§ 207.41 and 207.43, literally read, were contradictory. The Commission intended the two rules to provide for a scope of review covering all imports which were the subject of the suspended investigation, regardless of whether the agreement applied to less than all imports (as, for example, where most—but not all—of the foreign exporters accede to the agreement). The Commission, therefore, has changed § 207.43 to provide merely that the Commission will consider all of the merchandise subject to the investigation.

Another comment indicated a technical error in § 207.43(a)(2), namely, that the word "not" was omitted in two places which resulted in an improper statement of the subject of the Commission's review. The Commission has revised the language to read "whether changed circumstances exist which indicate that an industry in the United States would not be threatened with material injury or the establishment of such an industry would not be materially retarded if the countervailing duty order or antidumping order were modified or revoked." (Emphasis supplied here only.)

Finally, several comments on § 207.45 stated that the Commission should provide explicitly for requests for review of dumping findings issued under the Antidumping Act, 1921. The Commission has added language to the final rule to provide for review of both dumping findings issued under the Antidumping Act, 1921, and countervailing duty orders issued under the duty-free merchandise provisions of section 308(b) of the Tariff Act.

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

§ 207.1 Applicability of Part

This introductory rule makes the procedures set forth in part 207 applicable to all investigations conducted by the Commission under section 303 or title VII of the Tariff Act of 1930 (the Act). The inclusion of section 303 investigations is required by section 103 of the Trade Agreements Act of 1979, which makes the procedures and findings with respect to countervailing duty investigations set
forth in title VII of the Act applicable to merchandise imported from any nation which is not a "country under the Agreement" (defined in section 703(b) of the Act) and which is free of duty. A determination of injury pursuant to title VII of the Act is not required with respect to dutiable merchandise imported from a nation which is not a "country under the Agreement."

Subpart A—General Provisions

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

§ 207.2 Definitions applicable in Part 207

This rule defines certain terms used repeatedly in Part 207:

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

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

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

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

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

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

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

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

(i) The term "party" is defined to include two classes of persons: (1) Interested parties who have filed an appearance with the Commission under § 201.13, and (2) any other person who, after manifesting a proper interest in the subject matter of the Commission investigation, has filed such an appearance. A person who is not an interested party and who chooses to become a party to an investigation will receive copies of all documents served pursuant to § 207.3. However, such a person will also be required to comply with the obligations of a party, including service of documents under § 207.3 and submission of a prehearing statement under § 207.22.

(j) The definition of "record" reflects the definition of the record for purposes of judicial review contained in section 516A(b)(2)(A) of the Act. The Commission is of the view that the term "information" in section 516A(b)(2)(A)(i) includes only information that goes to the facts under investigation, and not to administrative deadlines, travel arrangements, guidelines for conducting investigations and similar matters. The Commission intends, therefore, that such documents not be made a part of the record.

§ 207.3 Service of documents.

This rule establishes requirements for the service of documents on parties to an investigation. Any party submitting a document for inclusion in the record is required to serve a copy of each such document on all other parties to the investigation. Persons not complying with these obligations may be removed from party status. This rule also provides that all documents, except transcripts, placed on the public record by the Commission staff must be made available to each party to the investigation.

§ 207.4 The record.

This rule establishes requirements for the maintenance of the record of Commission proceedings. The record will be divided into a public portion and a nonpublic portion consisting of documents which contain business confidential or other privileged information.

The Director is authorized by this rule to conduct such audits as he deems necessary. The absence of an audit will be presumed to indicate that the Director decided that no audit was necessary or desirable.

Materials received from the administering authority will be placed on the record and designated public or nonpublic in conformity with the designation assigned to them by the administering authority. Requests for access to or release of materials originating with the administering authority will be referred to that agency for its advice. Although the Secretary will make the final decision as to whether the material in question will be released, he will give serious consideration to the advice of the administering authority.

§ 207.5 Ex parte meetings.

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

§ 207.6 Reports of progress of investigation.

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

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

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

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

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

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

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

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

This rule provides that Commission questionnaires have the force of a subpoena, provided they are labeled as subpoenas and signed by a Commissioner. In the event any person refuses or is unable to produce the information requested in such a questionnaire in a timely fashion, the Commission may (1) in accordance with section 776(b) of the Act use the best information otherwise available in making its determination, (2) seek judicial enforcement of its subpoena under 19 U.S.C. 1333, or (3) take any other actions it deems necessary and appropriate, including waiver of any time limits set forth in part 207. See U.Sery v. Whitten Machine Works, Inc., 534 F. 2d 498 (5th Cir. 1977).

§ 207.9 Affirmative determinations by divided Commission.

This rule establishes a voting rule for investigations under part 207 to apply in instances where the Commissioners voting are evenly divided regarding whether any determination should be affirmative or negative. The rule is intended to implement and clarify section 771(11) of the Act. The rule provides that, if the Commissioners voting on a determination required under section 303 or title VII of the Act are evenly divided regarding whether the determination should be affirmative or negative, the Commission will be deemed to have made an affirmative determination. In order to conform to what the Commission believes to have been the intent of Congress, this section has been drafted to cover all Commission determinations under Part 207 wherein a Commissioner may vote affirmatively in more than one way. Thus, when the issue before the Commission is to determine whether there is (sections 705 and 735 of the Act), whether there would be (section 104(b) of the Trade Agreements Act), or whether there is a reasonable indication of (sections 702 and 732 of the Act) either (1) material injury, (2) threat of material injury, or (3) material retardation, an affirmative vote on any of the issues will be treated as a vote that the Commission’s determination should be affirmative.

Subpart B—Preliminary Determinations

Subpart B provides a procedural framework for preliminary investigations under section 303 and title VII of the Tariff Act of 1930, as amended, viz., the filing of petitions, the amendment of petitions, the conduct of preliminary investigations by the Commission’s Director of Operations, the submission of written comments by persons interested in the subject matter of investigations, the conduct of conferences among interested parties and the staff of the Director of Operations or hearings before the Commission, the submission of the recommendation of the Director to the Commission, the preliminary determination by the Commission as to whether there is a reasonable indication of injury, and the issuance of appropriate notification to interested parties and to the public through the Federal Register of Commission actions.

§ 207.10 Filing of petition with Commission.

Section 207.10 implements the requirement in sections 702(b) and 732(b) of the Act for simultaneous filings of countervailing duty and antidumping investigation petitions with the administering authority and the Commission.

§ 207.11 Contents of petition.

This rule restates the requirements for a petition set forth in sections 702(b) and 732(b) of the Act. Reference is made to the factors relating to injury which will be considered by the Commission pursuant to section 771(7) of the Act and § 207.28 with the expectation that the petitioner will include information relevant to these issues. The rule also requires a petitioner alleging critical
§ 207.12 Notice of investigation of reasonable indication of injury.

Upon receipt of a petition or of notice that the administering authority has initiated an investigation based on information available to it, the Director will consult with the administering authority and, as soon as practicable, institute a formal investigation to determine whether there is a reasonable indication of injury under section 703(a) of the Act in the event critical circumstances are found by the administering authority.Petitioners are advised to consult the applicable regulations of the administering authority for the required contents of a petition.

§ 207.14 Negative petition determination.

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

§ 207.15 Written statements and conference.

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

§ 207.16 Recommendation of Director.

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

§ 207.17 Determination by Commission of reasonable indication of injury.

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

Subpart C—Final Determinations

Subpart C contains the procedures specifically applicable to final determinations.

§ 207.20 Notice of investigation.

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

§ 207.21 Staff report.

This rule requires the Commission to place on the record a staff report containing preliminary findings of fact. It is intended that portions of the staff report containing confidential or privileged information be placed on the nonpublic record and the remainder of the staff report, including a nonconfidential summary of the confidential or privileged portions be placed on the public record. Section 207.04 provides for the maintenance of the record in two portions, the public portion containing nonconfidential material and the nonpublic portion containing privileged and confidential information.
material. This rule sets anticipated time limits for submission of the staff report. In 75-day investigations it will generally be filed on or before the 45th day after the date of the corresponding Commission notice of investigation. In 120-day investigations or extended investigations under section 735(a)(2) of the Act the staff report will generally be placed on the record on the third day after the date of issue by the administering authority of its final determination. In 180-day investigations the staff report will generally be placed on the record on or before the 130th day after the date of the corresponding Commission notice.

The purpose of this procedure is to provide to the parties a preliminary indication of the Commission staff's view of the affected industry. Parties will be able to prepare their prehearing statements in such a way as to address one common body of information describing the allegedly injured United States industry. The intention of this is to make for a more cogent and pointed briefing of the issues.

§ 207.22 Prehearing statement.

This rule requires each party to submit to the Commission a prehearing statement within 15 days after the date of service by the Commission to the parties of the public portion of the staff report discussed in the preceding rule. The preparation of prehearing statements following receipt of the staff report will generally be placed on the record on or before the 5th day after the date of the corresponding Commission notice.

It is anticipated that parties will make copies of witnesses' formal testimony available before the beginning of the hearing in accordance with § 201.12(d), and that hearing presentations will be brief, to the point, and will, to the greatest extent possible, summarize the arguments made forth in the prehearing statement and in the witnesses' prepared written testimony.

A verbatim transcript will be made of the hearing and will be subject to nonsubstantive revision in accordance with paragraph (c)(2) of this rule. The transcript will be placed on the public record.

§ 207.24 Posthearing submissions.

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

§ 207.25 Final determination by the Commission.

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

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

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

The final subsection of this rule is based on sections 705(b)(4)(B) and 735(b)(4)(B) of the Act, which require the Commission, when it makes a final determination that there is no material injury, but that there is a threat of material injury, to determine whether material injury by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under section 705(a) and 735(a) of the Act would have been found but for any suspension of liquidation of entries of the merchandise.
This rule incorporates the factors set forth in section 771(7) of the Act be considered by the Commission in making its determinations of injury under the Act. The illustrative factors which the Commission may consider in making its determination of threat of injury, derived from the report of the Committee on Ways and Means (H.R. Rep. No. 96-317, 96th Cong., 1st Sess. 47 (1979)), is also incorporated in this rule. The factors listed in this rule are not exclusive. Commission determinations of injury are governed ultimately by the standards in the following rule and by the judgment and discretion of the Commission.

§ 207.27 Standard for determination.

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

The enumeration in § 207.26 of the factors which must be considered in making countervailing and antidumping injury determinations—i.e., factors which for the first time are specified in the statutory text and consist of various factors, some of which singly or in combination have been considered relevant and determinative by the Commission under current law—provides no basis for changing the causality relationships which must be found to exist under existing law. It has been the long and uniform interpretation of existing law that an affirmative injury determination by the Commission requires the existence of a causal relationship between the subsidized or dumped imports and injury to a U.S. industry. This causation linkage between the offending imports and injury is based in existing law on the language in section 201(a) of the Antidumping Act and in section 303(b) of the Tariff Act of 1930 that were the subject of investigations, section 102 provides that the procedures applicable to investigations under title VII of the Tariff Act of 1930, as amended by the Trade Agreements Act, which were the subject of investigations pending before the effective date. Under section 103 of the Trade Agreements Act, investigations pursuant to section 302 of the Tariff Act of 1930 are subject to the procedural rules of title VII of the new law except to the extent that those rules would not be applicable to such proceedings. These rules may not be applicable because the product concerned is not a product of a country under the agreement, is not a duty free article, or is a duty-free article from a country with which the United States do not have obligations of the United States do not require an injury determination. As to section 302 cases that are subject to title VII, and cases that concern products that were the subject of pending investigations under the Antidumping Act, 1921, section 102 generally provides that the investigation of the same matter would continue after the effective date of the new law so as to begin the proceeding under the new law as if the determination under the new law that is most closely analogous to the latest determination actually made under the old law had been made on the effective date. Finally, § 207.30 implements section 104 of the Antidumping Agreements Act concerning countervailing duty orders in effect pursuant to the provisons of existing law which require some further action by the Commission. As to these various classes of cases, these rules apply.

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

Under paragraph (a)(2), if the administering authority has made a preliminary but not a final determination as of the effective date, then the Commission proceeds with respect to the same subject matter under rules applicable to Commission investigations following a preliminary determination of the administering authority under the new law (see subpart C). These rules provide that if the administering authority’s preliminary determination is affirmative, then the commission institutes an investigation leading to a final determination subject to certain counting rules provided for in the law; and if the administering authority’s preliminary determination is negative, then the Commission does not institute a formal investigation unless and until the
administering authority makes a final affirmative determination. Consistent with § 207.18 concerning negative preliminary determinations by the administering authority, § 207.30(a)(2) provides that the Director will continue his investigative activities as appropriate pending the administering authority's final determination.

Under paragraph (b) of this rule, if the Commission is conducting an injury investigation under existing law as of the effective date of the new law, then on the effective date it shall institute a 75-day injury investigation subject to certain rules for the treatment of preexisting determinations of the Commission. If the Director files a form he prescribes that would waive or that, waived or not, were issued after July 28, 1979, and before the effective date, or fell in certain other categories set forth in the regulation, the request for such an investigation, the notice has the effect of requiring—rather than requiring only on request—Commission investigations of certain countervailing duty orders of which the administering authority has suspended an agreement under section 104(a) of the Trade Agreements Act (requiring preliminary Commission determinations in 45 days); (2) pending investigations requiring Commission preliminary or final determinations (45-day to 120-day determinations); and (3) cases requiring—rather than requiring only on request—Commission investigations of certain countervailing duty orders under section 104(a) of the Trade Agreements Act (180 days).

The priorities the Commission has established would allow commencement of section 104(b) investigations at any time after they are filed, so long as within 10 days after the filing of a request for such an investigation, the Secretary would inform the administering authority of the filing of the request. This notice has the effect of requiring the administering authority to suspend liquidation of entries as to the affected merchandise. This effect does not, however, depend on commencement of an active Commission investigation. Subsequently, the rule would permit the Commission to commence a section 104(b) investigation at any time so long as it completes the investigation within 9 years after the request is filed in accordance with the law. If a number of such petitions is filed, as are presently expected, then priorities among various investigations may be set pursuant to the rule. One of the bases of these priorities would be consolidating cases relating to like products, which would be done pursuant to the Commission’s authority under section 603 of the Trade Act of 1974 to consolidate its investigations.

§ 207.32 Procedures for pending investigations.

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

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

This subpart describes procedures that implement portions of title VII of the Act, as amended by the Trade Agreements Act, which provide for special determinations in antidumping and countervailing duty investigations by the Commission. These determinations are principally found in sections 704, 794, and 751 of title VII. Subpart E concerns the termination of Commission investigations, completion and reinstatement of suspended investigations, and investigations to review both the suspension agreements of the administering authority and the determinations of the Commission when circumstances appear to have changed from those prevailing at the time of the determination.

§ 207.40 Termination and suspension of investigation.

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

Paragraph (b) provides that, upon receipt of a notice that the administering authority has suspended an investigation under section 704(b) or 734(b) of the Act, the Secretary shall issue a notice suspending the Commission’s investigation. This
provision is set forth in sections 704(f)(1)(B) and 734(f)(1)(B) of the Act. The notice shall not prevent the Director from conducting such investigative activities as he deems necessary, since investigative activity is authorized by section 603 of the Trade Act of 1974 and section 704(a) of the Act. Paragraph (c) provides for the resumption of suspended investigations upon notification from the administering authority that the agreements between the negotiating authority and foreign governments or foreign exporters which led to the suspension of an investigation no longer meet the requirements of the Act. Procedures and the time limits for the Commission’s investigation and final determination are established.

§ 207.41 Commission review of agreements to eliminate the injurious effect of subsidized imports or imports sold at less than fair value.

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

§ 207.42 Investigation continued upon request.

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

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

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

§ 207.44 Consolidation of investigations.

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

§ 207.45 Investigation to review outstanding determinations.

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

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

Section 207.46 provides that the Commission will issue any modification, clarification, or correction of a determination as may be necessary. This authority has been previously exercised. See Clarification of Determination in Investigation of Steel Wire Rope from Japan (58 FR 27590 (1973)).

Subpart F—Judicial Review

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

§ 207.50 Judicial Review.

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

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

This rule establishes procedures to facilitate judicial review in the U.S. Customs Court under section 777(c)(2) of the Act of Commission determinations not to disclose under protective order confidential information concerning domestic price or cost of production. Paragraph (a) of the rule deals with transmittal of the record and reflects section 2333(c) of the proposed Customs Courts Act of 1979. S. 1654, 98th Cong., 1st Sess. sec. 2333(c) (1979). Paragraph (a) provides that, when a court order is sought under section 777(c)(2), the Secretary shall within 5 days after service of a summons and complaint upon the Commission transmit to the Court under seal the confidential information involved along with "pertinent parts of the record." Pertinent parts of the record is defined in subsection (c) to consist of (1) the application for Commission disclosure, together with any documents filed in support thereof or in opposition thereto, (2) any governmental memoranda relating to the Commission’s denial, and (3) the Commission’s denial of the application. Subsection (d) provides that the Commission’s General Counsel is appointed the Commission’s agent for service of process in cases arising under section 777(c)(2).

Conforming Amendments

The Trade Agreements Act requires several changes in existing Commission rules for conducting subsidy and antidumping investigations. These necessary conforming amendments are primarily technical in nature, and are confined to part 207 of title 19 of the Code of Federal Regulations (19 CFR 201.00-41). The amendments are as follows.

§ 201.1 Applicability of part.

There presently exists a grammatical error in the second sentence of this section. By substituting “through” for “and” in the phrase “parts 202 and 237,” inclusive, “it is intended to make clear that rules of special application may appear in all of Parts 202, 204, 205, and 237 which in case of conflict will take precedence over the rules of general application set forth in Part 201.

§ 201.2 Definitions.

The conforming amendments propose three additional definitions for terms used extensively in Part 207, but which are found in other parts as well. The new definitions—"Trade Agreements
§ 207.13 Cooperation with administering authority; preliminary investigation.

§ 207.14 Negative petition determination.

§ 207.15 Written statements and conference.

§ 207.16 Recommendation of Director.

§ 207.17 Determination by Commission of reasonable indication of injury.

§ 207.18 Notice of preliminary determination.

Subpart C—Final Determinations

§ 207.20 Notice of investigation.

§ 207.21 Staff report.

§ 207.22 Prehearing statement.

§ 207.23 Hearing.

§ 207.24 Posthearing submissions.

§ 207.25 Final determination by the Commission.

§ 207.26 Factors considered in determination of material injury.

§ 207.27 Standard for determination.

§ 207.28 Publication of notice of determination.

Subpart D—Transition

§ 207.30 Pending investigations and existing countervailing duty orders.

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

§ 207.32 Procedures for pending investigations.


§ 207.40 Termination and suspension of investigation.

§ 207.41 Commission review of agreements to eliminate the injurious effect of subsidized imports or imports sold at less than fair value.

§ 207.42 Investigation continued upon request.

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

§ 207.44 Consolidation of investigations.

§ 207.45 Investigation to review outstanding determinations.

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

Subpart F—Judicial Review

§ 207.50 Judicial review.

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


§ 207.1 Applicability of part.

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

Subpart A—General Provisions

§ 207.2 Definitions applicable in Part 207.

For the purposes of this part, the following terms have the meanings hereby assigned to them:

(a) The term the Act means: The Tariff Act of 1930.

(b) The term administering authority means: The Secretary of the Treasury, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under section 303 or title VII of the Act is transferred by law.

(c) The term country under the Agreement means:

A country—

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

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

(3) With respect to which the President determines that—

(i) There is an agreement in effect between the United States and that country which—

(A) Was in force on June 19, 1979, and

(B) Requires unconditional most-favored-nation treatment with respect to articles imported into the United States, or

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

(iii) The agreement described in subparagraph (i) does not expressly permit—

(A) Actions required or permitted by the General Agreement on Tariffs and Trade, as required by the Congress, or

(B) Nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices.

(d) The term Director means: The incumbent Commission Director or Acting Director, Office of Operations, or, in the absence of either, a person designated by the Chairman.

(e) The term effective date of the Agreement means:

January 1, 1979, or such other date as is required by section 107 of the Trade Agreements Act as the effective date of title I of the Act.

(f) The term ex parte meeting means:

Any communication between (1) Any interested party or other person providing factual information in connection with an investigation, and

(2) Any Commissioner or Commissioners, or members of Commissioner’s staffs, or the Director of Operations, in which less than all parties participate, and which is not a hearing or conference for which an opportunity to participate is given to the parties.

(g) The term injury means: Material injury or threat of material injury to an industry in the United States, or material retardation of the establishment of an industry in the United States, by reason of the importation into the United States of a class or kind of merchandise which is found by the administering authority to be (1) subsidized, or (2) sold, or likely to be sold, at less than its fair value.

(h) The term interested party means:

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

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

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

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

(5) A trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States, by reason of the Agreement a proper interest in the subject matter of an investigation, has filed such an appearance.

(i) The term record means: (1) All information presented to or obtained by the Commission during the course of a proceeding, including completed questionnaires, information obtained from the administering authority pursuant to sections 702(d)(2), 732(d)(2), 703(d)(3), 735(d)(3), 705(c), and 735(c) of the Act, written communications from any party, recommended findings of fact by the Director of Operations, staff reports, all governmental memoranda pertaining to the case, and the record of ex parte meetings required to be kept pursuant to section 777(a)(3) of the Act; and

(2) A copy of all Commission orders and determinations, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

§ 207.3 Service of documents.

Any party submitting a document for inclusion in the record of the investigation shall, in addition to complying with § 201.6, serve a copy of each such document on all other parties to the investigation in the manner prescribed in § 201.13. Failure to comply with the requirements of this rule may result in removal from status as a party. The Commission shall make available to all parties to the investigation a copy of each document, except transcripts of conferences and hearings, placed in the record of the investigation by the Commission.

§ 207.4 The record.

(a) Maintenance of the record. The Secretary shall maintain the record of each proceeding conducted by the Commission pursuant to section 303 or title VII of the Act. The record shall be maintained contemporaneously with each actual filing in the record. It shall be divided into public and nonpublic sections. The Secretary shall also maintain a contemporaneous index of all documents, including exhibits thereto, and all other materials incorporated in the record. All material filed with the Secretary shall be placed in the record. All material which is placed in the record shall be maintained in the public record, with the exception of material which is privileged, or which is business confidential information submitted in accordance with § 201.3. Privileged and business confidential material shall be maintained in the nonpublic record.

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

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

§ 207.5 Ex parte meetings.

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

§ 207.6 Reports of progress of investigation.

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

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

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

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

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

(2) Not consult with any person not representing the party concerning the proceeding;

(3) Not use such information for any purpose other than

(4) Not copy or otherwise reproduce such information without first having received the written consent of the party from whom such confidential information was obtained;

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

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

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

(1) The person submitting the statement, and

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

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

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

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

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

§ 207.9 Affirmative determinations by divided Commission.

If the Commissioners voting on a determination by the Commission under section 702(b)(1) or 732(b)(1) of the Act are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph, when the issue before the Commission is to determine whether there is, whether there would be, or whether there is a reasonable indication of—
   (a) Material injury to an industry in the United States,
   (b) Threat of material injury to such an industry, or
   (c) Material retardation of the establishment of an industry in the United States,

by reason of imports of the merchandise, an affirmative vote by any Commissioner on any of the issues shall be treated as a vote that the determination should be affirmative.

Subpart B—Preliminary Determinations

§ 207.10 Filing of petition with Commission.

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

§ 207.11 Contents of petition.

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

§ 207.12 Notice of investigation of reasonable indication of injury.

Upon receipt by the Commission of a petition under § 207.10 or receipt of notice that the administering authority has commenced an investigation under section 702(a) or 732(a) of the Act, the Director shall, as soon as practicable after consultation with the administering authority, institute a preliminary investigation to determine whether there is a reasonable indication of injury under section 703(a) or 733(a) of the Act and shall publish a notice to that effect in the Federal Register.

§ 207.13 Cooperation with administering authority; preliminary investigation.

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

§ 207.14 Negative petition determination.

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

§ 207.15 Written statements and conference.

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

§ 207.16 Recommendation of Director.

The Director shall submit to the Commission his recommendation based on the record concerning the existence of a reasonable indication of injury under section 702(a) or 732(a) of the Act.

§ 207.17 Determination by Commission of reasonable indication of injury.

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

§ 207.18 Notice of preliminary determination.

The Commission shall notify the petitioner, other parties to the investigation, and the administering authority of its preliminary determination under section 703(a) or 733(a) of the Act and of the facts and conclusions of law upon which the determination is based, and it shall publish a notice of its determination in the Federal Register. If the Commission's preliminary determination is negative, the investigation shall be terminated. If the Commission's preliminary determination is affirmative, the Director may continue investigative activities pending notice by the administering authority of its preliminary determination under section 703(b) or 733(b) of the Act. If the administering authority's preliminary determination is affirmative, the Commission shall institute an investigation in accordance with subpart C. If the administering authority's preliminary determination is negative, the Director shall continue such investigative activities as he deems appropriate pending a final determination by the administering authority under section 705(a) or 735(a) of the Act.
Subpart C—Final Determinations

§ 207.20 Notice of investigation.
Upon receipt of notice from the administering authority of an affirmative preliminary determination under section 703(b) or 733(b) of the Act or, if the administering authority's preliminary determination is negative, of an affirmative final determination under section 705(a)(2) of the Act, the staff report shall normally be placed on the record by the Director on the third day after the date of issue by the administering authority of its affirmative final determination.

(3) 180-day investigations.—In injury investigations concerning waived and certain other countervailing duty orders under § 207.30(c) of these rules, that are to be completed within 180 days, the staff report shall be placed on the record by the Director within approximately 130 days of the date of issue of the corresponding Commission notice of investigation.

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

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

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

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

(c) Hearing Transcripts. (1) In general. A verbatim transcript shall be made of all hearings or conferences held in connection with Commission investigations conducted under this part.

(2) Revision of transcripts. Within 10 days of the completion of a hearing, any person who testified at the hearing may submit proposed revisions to the transcript of his testimony to the Secretary. No substantive revisions will be permitted. If in the judgment of the Secretary a proposed revision does not alter the substance of the testimony in question, he will incorporate the revision into a revised transcript.

§ 207.24 Posthearing submissions.
Posthearing briefs concerning the information adduced at the hearing may be filed with the Secretary within a time specified by the official presiding at the hearing, provided that no such posthearing brief shall exceed 10 pages of textual material, double spaced, on 8½ x 11 inch stationery. In addition, the presiding official may permit persons to file within a specified time statements responsive to questions or requests made by the Commission at the hearing. Posthearing submissions which do not accord with this rule will not be accepted.

§ 207.25 Final determination by the Commission.
(a) In General. At the times specified below, the Commission shall make a final determination of whether—

(1) An industry in the United States—
(1) Is materially injured, or
(ii) Is threatened with material injury, or

(ii) Is threatened with material injury, or

(2) The establishment of an industry in the United States is materially retarded.

by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under section 705(a)(1) or 735(a)(1) of the Act.

(b) Period for injury determination following affirmative preliminary determination by administering authority. If the preliminary determination by the administering authority under section 703(b) or 733(b) of the Act is affirmative, then the Commission shall make the determination required by paragraph (a) of this rule before the later of—


(1) The 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 703(b) or 733(b) of the Act or

(2) The 45th day after the day on which the administering authority makes its affirmative final determination under section 705(a)(1) or 735(a)(1) or (2) of the Act.

(c) Period for injury determination following negative preliminary determination by administering authority. If the preliminary determination by the administering authority under section 703(b) or 733(b) of the Act is negative, and its final determination under section 705(a)(1) or 735(a)(1) or (2) of the Act is affirmative, then the final determination by the Commission under this section shall be made within 75 days after the date of the administering authority's affirmative final determination.

(d) Certain additional findings. (1) If the finding of the administering authority as to critical circumstances under section 705(a)(2) of the Act is affirmative, then the final determination of the Commission shall include findings as to whether—

(i) There is material injury which will be difficult to repair, and

(ii) The material injury was by reason of such massive imports of the subsidized merchandise over a relatively short period.

(2) In the case of agricultural products, the effects of such imports on the domestic industry as set forth in §207.28. The Commission will also take into account the effects from the subsidized imports or imports not sold at less than fair value, which are attributable to factors other than those listed in §207.28, including volume and prices of nonsubsidized imports or imports not sold at less than fair value, contract violation in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry. The effects from the subsidized or less than fair value imports will not be weighted against the effects associated with other factors which may be contributing to overall injury to an industry. Nor will the petitioner be required to bear the burden of proving the negative, that is, that material injury is not caused by such other factors.

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

§207.27 Standard for determination.

The presence or absence of any factor which the Commission is required to consider under §207.26 shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury. The term “material injury” means harm which is not inconsequential, immaterial, or unimportant. In determining whether injury is occurring by reason of subsidized or less than fair value imports, the Commission will look at the effects of such imports on the domestic industry as set forth in §207.26. The Commission shall also consider information presented to it or that it obtains, if any, demonstrating that the harm attributed to the petitioner by the Commission is caused by such other factors.

§207.28 Publication of notice of determination.

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

207.28 Factors considered in determination of material injury.

(a) In making its determinations under section 703(a), 705(b), 733(a), and 735(b) of the Act, the Commission shall consider, among other factors—

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

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

(3) The material injury of such merchandise on domestic producers of like products.

(b) For purposes of paragraph (a)(1) in evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.

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

(i) Actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(ii) Factors affecting domestic prices, and

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

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

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

(d) For purposes of this section—In determining whether there is a threat of material injury, the Commission shall consider among other factors—

(1) The rate of increase of subsidized or dumped exports to the U.S. market

(2) Capacity in the exporting country to generate exports; and

(3) The availability of other export markets.

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

§ 207.30 Pending investigations and existing countervailing duty orders.

(a) Investigations in progress at the administering authority as of the effective date. If, as of the effective date, there is an investigation in progress under section 303 of the Act as to whether a bounty or grant is being paid or bestowed on either duty-free imports subject to a Commission injury investigation or imports from a country un- -the agreement or, under the Act, Antidumping Act, 1921, as to whether imports from a country are being or are likely to be sold in the United States or elsewhere at less than fair value, then the following rules apply: If the administering authority as of the effective date:

(1) Has not made a preliminary countervailing duty or a tentative antidumping determination, as the case may be, then the Commission shall issue a Notice of Investigation and commence an investigation with respect to the Act, as provided for in sections 703(a) or 733(a) of the Act, which shall be completed within 45 days after the effective date.

(2) Has made a preliminary countervailing duty or a tentative antidumping determination, but not a final determination, then the Commission shall proceed in accordance with subpart C of these rules to investigate the same matter, except that in the event of a negative preliminary or negative tentative determination by the administering authority, the Director shall continue such investigative activities as he deems appropriate pending a final determination by the administering authority.

(b) Investigations in progress at the Commission as of the effective date. If, as of the effective date, the Commission is conducting an investigation under section 303 of the Act or section 201(a) of the Antidumping Act, 1921, as to whether an industry in the United States is being, or is likely to be injured, or is prevented from competing, it shall terminate any such investigation and initiate an investigation concerning the same matter under title VII of the Act, which shall be completed within 75 days after the effective date, and it shall—

(1) Treat any final determination of the administering authority under section 303 as the net subsidy amount under subtitle A of title VII of the Act; and

(2) Treat any final determination of the administering authority under the Antidumping Act, 1921, as a final determination under section 753(a) of the Act.

(c) Commission investigations of injury in cases in which countervailing duties were waived or a countervailing duty order was published after July 25, 1979. Upon receipt by the Commission of the administering authority's most current net subsidy information pertaining to any countervailing duty order in effect on the effective date which the administering authority waived under section 303(d) of the Act or which was published after July 25, 1979, with respect to products of a country under the agreement, or the subject of which concerns frozen, boneless beef from the European Communities under Treasury Decision 76-109 (10 Cust. B. & Dec. 189 (1976)), the Commission shall commence an investigation to determine whether there is injury within the meaning of section 104(a)(2) of the Trade Agreements Act, which investigation shall be completed within 180 days after such receipt. The Commission shall transmit the investigation of certain unwaived investigations, Among the factors considered by the Commission for establishing priorities of institution among requests under § 207.30(d) when the work before the Commission is such as to make immediate investigation in such cases impractical are:

(a) The trade interests of the United States;

(b) The length of time a countervailing duty order has been in effect (longest first);

(c) The volume of trade of the product in question; and

(d) The appropriateness of consolidation of investigations relating to like products.

§ 207.32 Procedures for pending investigations.

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

Subpart E—Terminated, Suspended, and Continued investigations

§ 207.40 Termination and suspension of investigation.

(a) An investigation under title VII may be terminated by the Commission by giving notice in the Federal Register to all parties to the investigation, upon withdrawal of the petition by the petitioner. The Commission may not terminate an investigation, however, before a preliminary determination is made by the administering authority, under section 705(b) or section 733(b) of the Act.

(b) Upon receipt of a notice of suspension of an investigation by the
investigation.

Purpose.

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

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

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

§ 207.41 Commission review of agreements to eliminate the injurious effect of subsidized imports or imports sold at less than fair value.

If the administering authority determines to suspend an investigation upon acceptance of an agreement to eliminate the injurious effect of subsidized imports or imports sold at less than fair value, the Commission shall, upon petition, initiate an investigation to determine whether the injurious effect of imports of the merchandise which was the subject of the suspended investigation is eliminated completely by the agreement. Petitions may be filed by a party to the investigation which is an interested party described in subparagraph (3), (4), or (5) of § 207.24(b). Investigations under this § 207.41 shall be completed within 73 days of their initiation.

§ 207.42 Investigation continued upon request.

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

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

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

§ 207.44 Consolidation of investigations.

The Commission may, when appropriate, consolidate continued investigations under section 704(g) or section 734(g) of the Act with investigations to review agreements for the elimination of injury under section 704(b) or section 734(b) of the Act.

§ 207.45 Investigation to review outstanding determination.

(a) Purpose. Upon the receipt of information concerning, or upon a request for the review of, a determination concerning a suspension agreement accepted under section 704 or 734 of the Act or an affirmative determination made under section 704(b)(2), 705(b), 734(b)(2), or 735(b) of the Act, or under the Antidumping Act or section 303(b) of the Act, which shows changed circumstances sufficient to warrant a review of such determination, the Commission shall institute an investigation to determine, as the case may be, (1) whether, in light of the alleged changed circumstances, the agreement continues to eliminate completely the injurious effect of imports of the merchandise; or (2) whether changed circumstances exist which indicate that an industry in the United States would not be threatened with material injury, or the establishment of such an industry would not be materially retarded, if the countervailing duty order or antidumping order were modified or revoked.

Nothing in § 207.45 shall limit the inherent authority of the Commission to issue an appropriate modification, clarification, or correction of a determination within a reasonable time of its issuance.

Subpart F—Judicial Review

§ 207.50 Judicial review.

(a) In general. Persons entitled to judicial review under section 516A of the Act may seek review in the U.S. Customs Court.

(b) Transmittal of record. In the event a Commission determination is appealed to the U.S. Customs Court under section 516A, a copy of the record in the proceeding before the Commission, as such record is defined in § 207.24(j), or a certified list of all items therein, will be transmitted to the Court by the Secretary in accordance with the rules of the court.

(c) Service of process. The Commission's General Counsel shall be the Commission's agent for service of process in cases arising under section 516A of the Act.

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

(a) In general. Persons entitled to judicial review under section 777(c)(2) of a Commission determination not to disclose confidential information concerning domestic price or cost of production may apply to the U.S. Customs Court for an order directing the Commission to make the information involved available.

(b) Transmittal of record. In the event a court order is sought under section 777(c)(2) requiring the Commission to disclose confidential information concerning domestic price or cost of production, the Secretary shall within 5 days after service of a summons and complaint upon the Commission transmit to the court under seal the confidential information involved along with pertinent parts of the record.

(c) Pertinent parts of the record. The pertinent parts of the record shall consist of (1) the application for Commission disclosure together with any documents filed in support thereof or in opposition thereto, (2) any Government memoranda relating to the Commission's determination, and (3) the Commission's action on the application.

(d) Service of process. The Commission's General Counsel shall be the Commission's agent for service of process in cases arising under section 777(c)(2) of the Act.
Conforming Amendments

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

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

§ 201.2 [Amended]
2. Add new paragraphs (f), (g), and (h) to § 201.2 as follows—


(g) "Rule" means a section of the Commission Rules of Practice and Procedure (19 CFR Chapter I).

(h) "Secretary" means the Secretary of the Commission.

3. Revise § 201.7 to read as follows:

§ 201.7 Investigative authority and initiation of investigations.

(a) Investigative authority. In order to expedite the performance of its functions, the Commission may engage in investigative activities preliminary to and in aid of any authorized investigation, consolidate proceedings before it, and determine the scope and manner of its proceedings;

(b) Initiation of investigations. Investigations may be initiated by the Commission on its own motion, upon request of the President or the Special Representative for Trade Negotiations, upon resolution of the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, upon resolution of eitherbranch of Congress, or upon application, petition, complaint, or request of private parties, as required or provided for in the pertinent statute, Presidential proclamation, Executive order, or in this chapter.

§ 201.9, 201.11 and 201.12 [Amended]
4. Substitute the word "information" for the word "evidence" where it appears in § 201.9, § 201.11(c), § 201.12(e), and § 201.12(g);

5. Add in § 201.12(a) the words "or conferences" after the term "hearings" in each place such term is used.

6. Substitute in § 201.12(d) the words "not less than 3 business days prior to the hearing" for the words "three business days prior to the hearing or as close to actual presentation at the hearing as possible."


8. Add a new paragraph (i) to § 201.12 as follows—

§ 201.12 Conduct of nonadjudicative hearings.

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

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

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Part III

Department of Commerce
International Trade Administration
Antidumping Duties
DEPARTMENT OF COMMERCE
International Trade Administration
19 CFR Part 353
Antidumping Duties

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Final rule and requests for comments.

SUMMARY: The International Trade Administration is publishing final regulations concerning antidumping duties. These regulations replace the Customs Service regulations relating to antidumping and adopt in part, regulations proposed by the Customs Service (44 FR 59742). These regulations effect the changes made by the Trade Agreements Act of 1979, which repealed and superseded the Antidumping Act of 1921, and by Reorganization Plan No. 3 of 1979. The regulations now contained in 19 CFR Part 153 will be deleted from 19 CFR by the Customs Service at a later time.

DATES: These regulations are effective February 5, 1980. Written comments with respect to proposed Customs regulations. (§§ 153.7(b), part of 153.10(e), 153.12(j), 153.16(b), and 153.24) published on October 16, 1979 may be submitted until March 15, 1980.

ADDRESS: Written comments (in triplicate) with respect to the provisions mentioned above may be submitted to the Assistant Secretary for Trade Administration, Room 3826, Department of Commerce, Washington, D.C. 20230. Written comments submitted will be available for public inspection during regular business hours at Room 3100, Department of Commerce, Washington, D.C. 20230: (202) 777-1434.

FOR FURTHER INFORMATION CONTACT: C. Christopher Parlin, James Lyons or Anne White Foley, Office of General Counsel, Department of Commerce, Washington, D.C. 20230: (202) 777-1434.

SUPPLEMENTARY INFORMATION:

Background

The Trade Agreements Act of 1979 was enacted into law on July 25, 1979, and Title I became effective January 1, 1980. The Act transfers the authority to regulate antidumping duties from the Treasury Department and the U.S. Customs Service to the International Trade Administration, Department of Commerce. The Customs Service published proposed regulations on antidumping duties in the Federal Register on October 16, 1979, 44 FR 59742, with comments due on November 30, 1979. The Department of Commerce is hereby adopting certain sections of the proposed regulations published at 44 FR 59742 by the Customs Service and has determined for good cause, pursuant to section 533(d)(3) of Title 5 of the United States Code (5 U.S.C. 533(d)(3)), that further notice and public procedure prior to the effective date of these final regulations are impracticable, unnecessary and contrary to the public interest. These regulations are necessary to carry out the antidumping program, and consequently they will be effective immediately on publication. The Department, however, is deferring publication of final regulations on issues covered by certain sections of the proposed Customs Regulations published on October 16, 1979. As indicated, additional comments with respect to those previously proposed provisions may be submitted until March 15, 1980.

The provisions of the former Customs Regulations relating to antidumping duties were based on the Antidumping Act, 1921, as amended (19 U.S.C. 190 et seq.). Section 105(a) of the Trade Agreements Act of 1979, Pub. L. 96-39, repealed the Antidumping Act, 1921, as amended, effective January 1, 1980. Although Title I Subtitles B, C, and D (Antidumping Duties) of the Trade Agreements Act of 1979 in large measure retain the substantive law of the 1921 Act, some changes and additions to the regulations are required in order to implement the modifications in substantive law and procedure effected by the Trade Agreements Acts of 1979 and Reorganization Plan No. 3 of 1979 (44 FR 66273, December 3, 1979), which took effect January 2, 1980. A number of other regulations incorporate existing administrative interpretations and practices which had not heretofore been set forth in regulations but which are intended to be continued under the new statute.

The principal changes in the new law relate to shortened time limits during the investigative phase of proceedings; detailed provisions concerning suspension of investigations; the imposition of time limits on the liquidation of entries subject to the assessment of antidumping duties; yearly administrative review of outstanding suspension agreements and Antidumping Duty Orders; and greater public participation in, and greater public access to, information developed in the course of, antidumping proceedings. These changes in the law require that conforming amendments be made to the antidumping regulations.

Since publication by the U.S. Customs Service of proposed rules on October 18, 1979, Reorganization Plan No. 3 of 1979 and Executive Order 12188 have effected the transfer to the Secretary of Commerce of all functions of the Department of the Treasury pursuant to title VII (including section 771(1), which defines the administrative functions of the Tariff Act of 1930, except for certain functions reserved to the Customs Service.

In anticipation of the transfer effected by the Plan, the Departments of Commerce and the Treasury have jointly reviewed and considered all comments received on the proposed regulations and have jointly prepared these final regulations; although since January 2, 1980, all preparation has been performed by the Commerce Department. The Trade Agreements Act of 1979 requires the Department of Commerce to issue regulations necessary or appropriate to carry out its antidumping duty responsibilities by January 1, 1981. However, in order for the Department of Commerce to conduct its antidumping duty program, it is necessary for some regulations to be effective as soon as possible after the effective date of Title I of the Act, January 1, 1980. These regulations follow. The Department anticipates that as experience is gained in administering its new antidumping duty program, the Department will continue to evaluate these regulations, and, when appropriate, will propose amendments to them. The Department will consider written comments on the regulations published below.

The Department of Commerce is deferring publication of final regulations on issues covered by certain sections of the proposed regulations of the Customs Service published in the Federal Register on October 16, 1979, specifically §§ 153.7(b), part of §§ 153.10(e), 153.12(j), 153.16(b), and 153.24. Final regulations on these issues are not necessary immediately for the conduct of the antidumping duty program. Moreover, these issues are complex, and the Department prefers to gain more experience with them prior to publishing final regulations. In addition to the sections enumerated above, sections 153.15 and 153.19 of the Customs proposed regulations are not being made final in the form they appeared in the proposed rulemaking. Several significant changes from current practice were included in these sections as proposed. Additional consideration of the suggested changes and the comments submitted thereon is necessary. Accordingly, the substance of the former Customs Regulations on
circumstances of sale and level of trade (19 CFR 153.10, 153.15) has been retained in the interim, and they are published herein. The Department invites additional comments and, if comments on Customs proposed regulations §§ 153.7(b), 153.10(e), 153.12(j), 153.15, 153.16(b), 153.19 and 153.24. Comments should be sent to the address listed above and must be received by March 15, 1980.

On November 16, 1979, the President directed Executive Departments and Agencies to ensure that federal regulations will not place unnecessary burdens on small businesses and organizations. The President's memorandum was issued after publication of the proposed regulations on antidumping duties and preceded the close of the comment period by only two weeks. To comply with the President's memorandum, the Departments of Commerce and the Treasury have examined the written comments for those relating to small businesses and have attempted to incorporate these comments in the regulations published below. Moreover, the Departments have introduced some flexibility into the regulations in order to minimize the burden on small businesses and organizations. A section was added inviting persons intending to file petitions to seek from the Department of Commerce information on the requirements for petitions prior to filing. A provision was added to waive, when unduly burdensome, the requirement that parties serve written comments on all other parties. In at least one case, a comment was rejected because of the burden to petitioners, particularly small businesses. This comment suggested requiring the petitioner to give notice of its filing to all parties named in the petition.

However, because the comment period was well underway at the time of the President's directive to minimize unnecessary regulatory burdens on small businesses, the Department of Commerce now invites written comments specifically on the effect on small businesses and organizations of the regulations published below as well as the sections enumerated above upon which final action is being deferred. Written comments should be sent to the address listed above and must be received by March 15, 1980. The Department of Commerce will analyze these comments and, if appropriate, publish proposed or final amendments reflecting them.

In formulating the regulations published below, the Departments of Commerce and Treasury have considered all written comments received as well as the testimony which was presented at the November 5, 1979, conference relating to the proposed antidumping duties. Some comments went beyond the scope of this rulemaking or urged changes inconsistent with the Trade Agreements Act of 1979. These suggestions have not been incorporated. Some comments addressed matters more appropriately addressed by the U.S. International Trade Commission; these were referred to the Commission. Some comments urged a degree of specificity considered inappropriate for regulations and were rejected for this reason.

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

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

1. Section 353.0 Scope. This section delineates the scope of Paragraph 353. The provision, which appeared in the proposed rulemaking, remains unchanged. However, the publication of § 153.12(j) of the proposed regulations.

2. Section 353.1 Relationship of Fair Value to Foreign Market Value. This provision references the manner in which foreign market value shall be determined. It remains as published in the proposed rulemaking.

3. Section 353.2 Definition of Foreign Market Value. This provision references the manner in which foreign market value shall be determined. It remains as published in the proposed rulemaking.

4. Section 353.3 Foreign Market Value Based on Price in the Country of Exportation. No comments were received pertaining to this provision, and it remains unchanged.

5. Section 353.4 Foreign Market Value Where Sales in the Country of Exportation Are Inadequate. The comments received suggested that the preference for third country sales over constructed value should be more strongly stated. Further guidance was also requested with respect to those situations in which home market sales would be considered inadequate and constructed value would be determined to be the most appropriate means of calculating foreign market value. The preference for use of third country sales set forth in paragraph (b) of the section cannot be stated more strongly without eliminating the discretion which the Act confers on the Secretary and which the Secretary will require in those circumstances where the use of third country sales is inappropriate. With regard to the second comment, other sections of the regulations, specifically § 353.7 (cost of production) and § 353.8 (state-controlled-economy country), already indicate two instances where constructed value ordinarily will be used. The request that the regulations more clearly stipulate when home market sales will be adequate has been adopted: a general 5 percent rule, administratively applied for construction value, has now been incorporated in paragraph (a) of this section.

6. Section 353.5 Foreign Market Value Based on Sales to a Third Country. Comments were received which questioned whether it would be more appropriate to base the selection of a surrogate third country first on considerations of volume rather than similarity of merchandise. The "such or similar" definition which appears in Section 771(16) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979, requires that similarity be the paramount consideration so long as an adequate volume of sales exists. Other comments opined that the provision in paragraph (d) for aggregation of countries should be used in only exceptional circumstances. It is likely that the aggregation principle will be used only rarely. However, the Department wishes to gain experience in administering the program before determining whether a limitation to "exceptional circumstances" is warranted. Other one comment recommended substituting "U.S. market" for "home market" in the last line of paragraph (c). This suggestion was adopted to ensure no ambiguity in the provision, which is intended to refer to the U.S. market.

7. Section 353.6 Foreign Market Value Determined by Constructed Value. One comment recommended that in the calculation of constructed value, use should be made of generally accepted accounting principles as defined in § 153.12(j) of the proposed regulations. However, the publication of § 153.12(j) in final form is being deferred to permit further analysis of the concepts embodied therein. Consequently, it would be premature to consider such principles as they relate to the calculation of constructed value. The
other comments received pertain to subsection (b); specifically, the meaning of "any element of value" and whether the transaction prices would be required to include the statutory minimum of 10% for general expenses and 8% for profit. The elements of value to be considered are those mentioned in § 353.8 (a)(1) and (a)(2), and a cross-reference to them has been included. The inclusion of the statutorily mandated minimum amounts for general expenses and profit will not be required in determining the arm's-length nature of the sale between related parties; normal considerations of profit and expenses in the market will be adequate.

8. Section 353.7 Foreign Market Value Where Sales Are Made at Less than the Cost of Production. Comments submitted with respect to paragraph (a) expressed a concern that the reliance to be placed on "the best available information" was over-emphasized and that an opportunity would not be permitted for the submission of supplemental data necessary to rectify a deficiency in the information supplied. As the proposed regulations provided, resort to the "best available information" will be made whenever the information supplied is inadequate. What will, in fact, constitute the best available information will depend largely on the particular circumstances: at times it may be the information supplied by the respondents subject to the investigation; at other times, the information supplied by the petitioner; and, of course, it may also constitute a combination of those and other sources. Any party will be permitted to supplement otherwise deficient data as long as the additional submissions are made within sufficient time to permit analysis and verification of the additional data.

The remaining comments relevant to this section pertained to paragraph (b) which defined "cost of production". A number of the concepts which were formally described for the first time in proposed regulations were criticized. In light of the need for additional analysis of those comments, the publication of paragraph (b) in final form is being deferred, although the earlier proposal should be considered as continuing as a proposal. Any additional submissions with respect to the issues developed therein are invited.

9. Section 353.8 Foreign Market Value of Merchandise from State-Controlled-Economy Countries. The comments focused on the appropriateness of the comparability of economy standard. This concept was incorporated in the Customs Regulations on August 19, 1978 (43 FR 35285), and many of the same issues were considered then. Although the current regulations are republished for this final rule-making, continued consideration is being given to the possibility of amending the regulation to reflect the concerns expressed in the comments, particularly those relating to other methods of determining economic and commercial comparability. One change has been made in paragraph (a) to codify a previously unstated preference for comparisons based on prices.

10. Section 353.9 Foreign Market Value of Merchandise from a Third Country by a Related Company. This provision remains unchanged. Although a few comments suggested that the section be expanded to provide additional guidance with respect to its use, the absence of any experience under the paragraph made such elaboration inappropriate at this time.

11. Section 353.10 Definition of United States Price. The final regulation remains unchanged, except that subsection (e) is being deferred. The definition of purchase price is consistent with present practice under which sales from the foreign producer to middlemen and any sales between middlemen before sale to the first unrelated U.S. purchaser are examined to determine whether any of those sales are made below cost. Several comments expressed concern that the language in the paragraph which accompanied the proposed regulations indicated "that if the manufacturer or producer knew or had reason to know that the goods were for sale to an unrelated U.S. buyer and the terms of sale were fixed or determinable from events beyond the control of the manufacturer at the date of importation, the manufacturer's or producer's sales price to an unrelated middleman will be used as 'purchase price.' " The comments suggested that purchase price would not always be the most appropriate United States price to use in such circumstances.

The comment has merit. Accordingly, in the situation described, purchase price may not always be the most appropriate United States price; in certain circumstances, the preferable comparison will be to exporter's sales price.

Other comments criticized the "80 percent rule" contained in paragraph (e) as arbitrary and contrary to commercial considerations governing profits. This provision was not contained in the former Customs Regulations. In light of the significant change which would result and the number of comments received, it was determined to defer this provision to permit further study. The proposal reflected, in part, past practice and should be considered as continuing as a proposal.


13. Section 353.12 Other Definitions. Several comments noted the omission of United States importers as parties to the proceeding. This omission was corrected; all interested parties as defined by the Act can be parties to the proceeding. This omission was corrected; all interested parties as defined by the Act can be parties to the proceeding, provided that later intervention would be allowed for good cause. The essence of these comments was adopted. The publication of proposed Customs Regulation § 353.12(f) in final form is being deferred to permit further analysis of the concepts relating to, and the definition of, the phrase "generally accepted accounting principles."

14. Section 353.13 Determination of Foreign Market Value. Several comments objected to inclusion of the burden of proof requirement. It was concluded that while burden of proof was not the appropriate standard, some standard should be required of the person claiming entitlement to an adjustment. Accordingly, the regulation has been revised so that a party claiming an adjustment must establish entitlement thereto to the satisfaction of the Secretary.

15. Section 353.14 Differences in Quantities. One comment questioned the consideration of industry practice in determining adjustment amount in cases of over- and under-sales. This provision of paragraph (a) has been maintained, because knowledge of the industry-wide practice assists in the analysis of practices by a specific firm.

Two comments suggested that adjustment for differences in prices arising from sales of different quantities be allowed without the need to satisfy the six-month rule or cost justification rule of paragraph (b). This suggestion was not adopted. The paragraph (b) criteria are necessary and appropriate to ensure adequate substantiation and validity of claims for such an adjustment.

One comment suggested that the time period in paragraph (b)(1) should be the period of investigation rather than six months prior to the date the issue of dumping was raised. This suggestion was adopted. The investigation period ordinarily covers the period from five months before to one month after receipt
Physical Characteristics.

Several earlier proposal should be considered as section of the proposed regulations. 153.10) has been republished: possible former Customs Regulations (19 CFR and range of comments, the proposed adjustment on December 31.1979.)

Several others regarded the expansion of this provision from that in the former Customs Regulations. The substance of the provision from the former Customs Regulations under the Antidumping Act, 1921, in effect on December 31, 1979.)

Several others regarded the expansion as too limited. Because of the number and range of comments, the proposed regulation has not been made final. The substance of the provision from the former Customs Regulations under the Antidumping Act, 1921, in effect on December 31, 1979.)

Some comments objected to paragraphs (b) and (c); they suggested that weighted averages always should be used. This suggestion was not adopted. When the vast majority of sales are at one price, use of that dominant price clearly is appropriate. Likewise appropriate is paragraph (d), which permits selection of "any other method for determining fair value" when neither paragraph (a) nor (b) is applicable. Because of the close relationship between "fair value" and "foreign market value," it was deemed appropriate to substitute "foreign market value" for "fair value" in this section to reflect the intent that, to the maximum extent possible, calculations will be performed on the same basis for both fair value and foreign market value purposes.

Sections 353.21 and 353.22 Shipment from Intermediate Countries and Transactions Between Related Persons. No comments were submitted regarding these sections. They remain as published in the proposed rule-making.

Sections 353.21 and 353.22 Shipment from Intermediate Countries and Transactions Between Related Persons. No comments were submitted regarding these sections. They remain as published in the proposed rule-making.

Sections 353.17 and 353.18 Offering Price and Fictitious Sales. No comments were submitted regarding these sections. Accordingly, they remain as published in the proposed rule-making.

Sections 353.17 and 353.18 Offering Price and Fictitious Sales. No comments were submitted regarding these sections. Accordingly, they remain as published in the proposed rule-making.

Sections 353.19 Level of Trade. Several comments objected to the change in this provision from that in the former Customs Regulations. The proposed regulation has not been made final. Possible revision of this section has been deferred; the earlier proposal would be continued as continuing as a proposal. The provision from the former Customs Regulation (§ 353.19) has been republished. The regulation published herein is intended to reflect no change in the substance of the Customs Regulations under the Antidumping Act, 1921, in effect on December 31, 1979.)

Sections 353.20 Sales at Varying Prices. Several comments suggested that paragraph (a) be clarified to make explicit that there can be two fair values—one calculated in accordance with § 353.14(b)(3) or 353.19 another for remaining sales. While two fair values possibly could exist in a situation involving a level of trade adjustment (§ 353.19), the making of adjustments for differences in quantities (§ 353.14(b)) or the making of any other adjustments could not produce more than one fair value for such or similar merchandise produced by the same person and sold at or about the same time as the merchandise in question sold to the U.S. Accordingly, reference to § 353.14(b)(3) has been deleted. In addition, paragraph (a) has been rephrased for purposes of clarity.

Some comments objected to paragraphs (b) and (c); they suggested that weighted averages always should be used. This suggestion was not adopted. When the vast majority of sales are at one price, use of that dominant price clearly is appropriate. Likewise appropriate is paragraph (d), which permits selection of "any other method for determining fair value" when neither paragraph (a) nor (b) is applicable. Because of the close relationship between "fair value" and "foreign market value," it was deemed appropriate to substitute "foreign market value" for "fair value" in this section to reflect the intent that, to the maximum extent possible, calculations will be performed on the same basis for both fair value and foreign market value purposes.

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proposed. In any event, there is no legal justification for treating 1.5 percent per se as de minimis.

23. Section 353.24 Fair Value Price Comparisons in Markets Reflecting Parallel Pricing. Numerous comments asserted that this regulation, which does not appear in the former Customs Regulations, contained excessively vague terms and reflected a marked departure from traditional dumping methodology. This regulation has not been made final at this time; it is being deferred to permit further study. The earlier proposal should be considered as continuing as a proposal.

24. Section 353.25 Information Generally Available. One comment suggested that the first sentence of subsection (a) be amended so that the reference to material submitted or collected is limited to "by any interested party." Since the statutory provision on the record for judicial review deals with "all information presented to or obtained by the Secretary" (section 516A(b)(2)(A)(ii), Tariff Act of 1930, as amended by section 1001(a), Trade Agreements Act of 1979, 93 Stat. 302 (19 U.S.C. 1516a)), it was not considered appropriate to make this change. Two technical changes have been made in paragraph (a). It was determined that instead of merely citing the statutory provision on contents of the record for review, the statutory criteria should be spelled out. It was also determined that the last sentence in paragraph (a) should be part of paragraph (b).

25. Section 353.26 Ex Parte Meetings. Several comments suggested that the record of ex parte meetings should contain, in addition to the identity of the persons present, the date, time and place of the meeting. This suggestion has been adopted. It was also suggested that the regulation identify the party responsible for preparing the memorandum of the meeting. This suggestion also has been adopted. The regulation now indicates that normally the memorandum for the record will be prepared by one of the Government participants. Of course, in light of § 353.46(a) ("submission of information and written views") private parties who participate in such meetings may submit their own summaries. Another comment objected to the materiality requirement in the first sentence. Section 777(a)(3) of the Tariff Act of 1930, as amended (93 Stat. 187, 19 U.S.C. 1677(a)(3)) refers to persons providing factual information "in connection with an investigation." In light of the statutory language the regulation has been changed to refer to "factual information relating to a determination." (Section 355.16 of the Countervailing Duties Regulations. 19 CFR 355.16, published in the Federal Register on January 22, 1980 (45 FR 4932, 4939), also will be amended to conform to this change).

26. Section 353.27 Confidentiality Maintained. In response to a comment that this section of the proposed regulations was more appropriately situated in another section, the material has been deleted and so transferred. Several comments objected to paragraph (b) of the proposed regulation. They pointed out that unlike all other situations involving information submitted under a request for confidential treatment, this section contained no provision for notifying the submitter of the intent to disclose such information and providing an opportunity to withdraw it rather than have it disclosed. The revised provision (in § 353.23(e)) clearly indicates that notification will be given and an opportunity to withdraw the material provided in all instances where a request for confidential treatment is not granted. The transferred material has been replaced with language dealing with the maintenance of confidentiality of information designated as confidential by the person submitting it.

27. Section 353.28 Requests for Confidential Treatment of Information. One commenter objected to the provision of a 10% band for approximated presentation of confidential information, stating it was not large enough where the numbers involved are small. While such a problem may exist in a small number of cases, it has been determined that, on balance, use of a wider band would have the effect much more often of excessively distorting the nonconfidential summary. Accordingly, the comment has not been adopted. Another comment stated that paragraph (a)(3) could result in less information being made available than under the former Customs Regulations since only a brief nonconfidential summary is required to accompany an agreement to permit disclosure under an administrative protective order. Where such an order is granted, parties other than those whose attorneys or other representatives are granted access will have only the less detailed nonconfidential summary. This is an inevitable result of the protective order mechanism; it was determined to be inappropriate to require a more detail summary in such cases. However, the comment was adopted with respect to situations where the request for an order is denied. Accordingly, the regulation has been amended to indicate that where the request for a protective order is denied, a nonconfidential summary conforming to the requirements of paragraph (a)(1) or a statement under paragraph (a)(2) shall be required. Where the request for a protective order is granted, parties other than those whose attorneys or other representatives are granted access will have only the less detailed nonconfidential summary.

Two comments objected to the provision in paragraph (b) that, nonconforming requests be returned to the submitter; they expressed the view that this paragraph should contain the same provision for notification to the submitter and opportunity to correct as is contained in new paragraph (e). This suggestion has not been adopted. Paragraph (b) is concerned with procedurally deficient requests for confidential treatment (including inadequate nonconfidential summarization), while new paragraph (e) deals with the substantive question of the effect of a determination that information does not warrant confidential treatment. Thus, the mechanics for each situation are appropriate—rejection of a nonconforming request under paragraph (b) and notification and opportunity to withdraw under (e). Of course, a request rejected under paragraph (b) may always be resubmitted, as long as the resubmission is timely. Several comments objected to this provision and requested that a 10-day period always be permitted for resubmission. This suggestion has not been adopted. Under the short time limits of the new Act it would be exceedingly burdensome automatically to permit a 10-day resubmission period. Thus, it has been determined that the request for a protective order may be submitted in denied. Accordingly, the regulation has been amended to indicate that where the request for a protective order is denied, a nonconfidential summary conforming to the requirements of paragraph (a)(1) or a statement under paragraph (a)(2) shall be required.

Several comments stated that paragraph (c) should be amended to provide that unless a request for confidential treatment is denied within 10 days, the request should be deemed accepted. This suggestion has not been adopted. The right of other interested parties to review information not truly warranting confidential treatment should not be defeated by the automatic grant of such treatment for any reason not relevant to the content of such information. The regulation has been amended, however, to provide that normally a determination on whether to grant a request for confidential treatment will be made within 10 working days.
Paragraph (d) has been divided into two paragraphs for purposes of clarity, one dealing with the grant of a request for confidential treatment, the other dealing with the denial of such a request. In new paragraph (e), which covers the situation where requests are denied, the material originally in paragraph (b) of § 353.27 of the proposed regulations has been relocated.

23. Section 353.29 Standards for Determining Confidentiality of Information

One comment objected to inclusion of "ordinarily" in paragraph [a]. The comment was not accepted, because it was determined that particular circumstances (e.g., public disclosure of the same information elsewhere) might make it inappropriate to grant confidential treatment. Several comments asserted that information from domestic interested parties guarding the identity of foreign interested parties should not be accorded confidential treatment. This comment has been accepted in part. Paragraph (b) is being amended to provide that such information will not be accorded confidential treatment except to the extent that it might disclose the identity of confidential sources used by the domestic interested parties. This revision is being made because it is recognized that knowledge of allegations by domestic interested parties is a vital element in the attempt by foreign interested parties to establish that they are not engaged in the complaint of unfair trade practices. One comment stated that the identity of sources should never be publicly disclosed. This comment was not accepted. Under paragraph [c][6], the identity of sources can be protected where requested and approved. No information from foreign firms is generally provided to employees of foreign government.

Administrative Action accompanying the Trade Agreements Act of 1979 (H. 96th Cong., 1st Sess. 437 (July 19, 1979)). Use of "generally" precludes absolute limitation to attorneys. Of course, business confidential information from foreign firms concerning prices of actual transactions, production and distribution costs, and names of particular customers and suppliers is vital in antidumping duty proceedings. Such information is considered highly confidential and will be provided only if those submitting it believe that it is, and it is in fact, exceedingly unlikely that such information will be disclosed to persons who should not have access (primarily competitors). Accordingly, the Department will grant administrative protective orders only where it is convinced that the requestor will be subject to effective sanctions in the event of a breach; normally this will be limited to attorneys who are subject to disbarment.

Numerous comments also suggested an addition to the regulations indicating that an administrative protective order will be granted only up a showing of good cause. This suggestion has been adopted. The applicant for an order must demonstrate good cause for release. Further, in determining whether to grant the order, the need of the party requesting the order will be weighted against the need of the party submitting it for continued confidential treatment. This balancing test is taken from language in the Senate Report dealing with judicial protection orders. (S. Rep. No. 96-249, 96th Cong., 1st Sess. 100 (1979). It was considered appropriate to apply the standard of section 773(b) of the Act to administrative protective orders as well.

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

Some comments expressed the concern that paragraph (b)(1)(D) as drafted could cause harm under protective order to employees of domestic competitors. The section uses the phrase "persons employed by or supervised by the attorney or representative". Clearly, employees of domestic competitors should not have such access. The regulation has been amended to so indicate explicitly.

30. Section 353.31 Information Exempt From Disclosure

One comment suggested that information received from a foreign government should not be "classified" but therefore exempted from disclosure. Where a foreign government is merely transmitting data received from and prepared on behalf of private sources, this suggestion has not been adopted. Under the terms of Executive Order 12065 the Department is not permitted to disregard a foreign government's submission of information in confidence. Further, it is often difficult to determine whether information is, in fact, merely being transmitted by a foreign government on behalf of private sources or whether it has been supplied, in part at least, by the foreign government itself. In practice, foreign governments will be discouraged from claiming confidential treatment for information they are merely transmitting on behalf of private sources.

31. Section 353.35 Procedures for Self-Initiation

Two comments suggested that lengthy consultations with a signatory to the Agreement on antidumping prior to initiating an investigation under this section might unduly delay initiation. To make clear that this is not contemplated, this regulation has been changed to require that a signatory be given an opportunity for consultation prior to self-initiation.

32. Section 353.36 Procedures for Initiation by Petition

Some comments urged reduction in the information required to be in a petition. This comment was not followed, because information is required only to the extent it is reasonably available to the petitioner. To assist petitioners, a provision was added inviting petitioners to obtain additional information concerning requirements for petitions by contacting the Office of the Assistant Secretary for Trade Administration. This provision also responds to a comment which suggested that persons intending to file petitions be allowed to submit their petitions for "screening" prior to filing.

One comment suggested that a petitioner be required to supply documentation on which it relies in making its petition if reasonably available. This comment was adopted. It should be noted that petitioners are required to state the position of other industry members on the petition. This comment was rejected on the ground that each industry member best knows its own position and should be the source of that information.

One comment suggested that paragraph [a][9] implied that the Secretary might deviate from the standard of section 773(b) of the Act. To make clear that no deviation from the Act is intended, paragraph [a][9] was revised to conform to the statutory language.

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

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

One comment suggested that an opportunity should be provided for submission of comments on the sufficiency of a petition prior to a determination whether to commence an investigation. Solicitation of comments prior to rejection as impracticable within the 20 days allowed by the Act for the sufficiency determination.

33. Section 353.37 Determination of Sufficiency of Petition. One comment urged that amendment of the product description, as appropriate, be allowed based on materials and information received during the investigation. No change was made to this section since such an amendment is not precluded by the language of the regulation.

One comment suggested that the regulation make clear that the petition is deemed to be filed at the time it is received by the Secretary. This comment was adopted.

34. Section 353.38 Full-scale Investigation. Paragraph (b) was added so that exporters representing a sufficient dollar volume of exports for a suspension agreement may request inclusion in the investigation.

35. Section 353.39 Preliminary Determinations. Several amendments have been made in this section to reflect comments received in response to the proposed rule-making. Paragraph (b) has been changed to require that a petitioner, when requesting an extension of the period prior to a preliminary determination, set forth the reasons for the request. Without such information the Department would be unable to rule on the requests satisfactorily. Several comments indicated displeasure with paragraph (d) which limited disclosure to domestic interested parties preliminary to a waiver of verification. Neither the Senate or House Reports nor the Statement of Administrative Action are explicit on whether disclosure was intended to be to all interested parties. In the interest of fairness, the regulation has been revised to indicate that the posting of a bond or other security should ordinarily be considered adequate to protect the revenue. Whether special bonds ultimately will be required for merchandise subject to a suspension of liquidation in an antidumping duty investigation is a question which must await further review at the administrative level.

38. Section 353.40 Critical Circumstance Determinations. No comments were received with respect to this section, and it remains unchanged.

37. Section 353.41 Termination of Investigation. One comment suggested that this regulation should provide for termination of an investigation upon a negative preliminary determination on injury by the International Trade Commission. This comment was adopted.

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

39. Section 353.42 Suspension of Investigation. Certain aspects of this section have been further clarified. Paragraph (g) has been amended to indicate the principal criterion which will govern in selecting the most representative period for purposes of establishing a ceiling on the level of imports during the interim period preceding the date on which the sales at less than fair value are to be eliminated or exports discontinued. A number of comments recommended that the representative period not include any time during which sales at less than fair value had been made with respect to the subject merchandise. This recommendation was not adopted, because where sales at less than fair value have existed for a substantial period, the adoption of the recommendation could compel the Secretary to utilize a time period which is truly unrepresentative. Moreover, the regulations preserve sufficient flexibility so that the Secretary can use a period other than the six-month period ordinarily to be used where circumstances so require.

Several other comments questioned whether any authority exists to exclude from entry merchandise imported in excess of a ceiling established pursuant to paragraph (g). The exclusion language was inadvertently included in the proposed rule-making and has now been deleted. Where the volume of entered merchandise is in excess of that imported during the designated representative period, the suspension agreement may be deemed violated.

Other comments suggested that such terms as "extraordinary circumstances" and "public benefit" be defined in the regulations. The definition of these terms, which are newly added by the Trade Agreements Act of 1979, will be deferred until the Department gains sufficient experience in their application.

Paragraph (b) relating to a petitioner's role in the suspension procedures has been amended to reflect explicitly the legislative intent that the petitioner be given a meaningful role during the period prior to acceptance of the agreement.

38. Section 353.43 Violations of Agreements. This section pertaining to the violation of agreements which form the basis for the suspension of an investigation remains unchanged except for a clarifying amendment in paragraph (b). The language of that paragraph has been modified so as to make it clear that new sales of a commodity are to be given to parties only where that breach is inadvertent and other than one which is considered to be intentional as defined in paragraph (c) of the section.

40. Section 353.44 Final Determination. A number of comments stated that the deadline is too short for presenting written views prior to a final determination. While sympathetic to these views, the Department of Commerce has not been able to incorporate the suggested changes because any additional time granted to the parties would impair the ability of the Department to gain the information from the parties as part of their consideration of whether the public interest is served by termination.

41. Section 353.45 Exclusion of Particular Firms. Conflicting comments were received pertaining to this section: some recommend that exclusion be automatic; others that it be discretionary. Practical administrative considerations dictate that a firm which, although potentially subject to an Order, has not itself been investigated, should bear the burden of making application for exclusion and supplying the necessary information. Those firms which are investigated will automatically be excluded if exclusion is appropriate. Where firms are excluded, however, the regulations provided for publication of the names of the firms so excluded.
that each party serve its written comments on the other parties be deleted because of the burden imposed on small businesses. In response to this comment, a provision was added allowing the Secretary to waive the requirement when unduly burdensome.

Section 353.47 Hearings. One comment suggested that notice of the hearing be given in the notice of the preliminary determination. This comment was rejected because, at the time of the preliminary determination, the hearing will not necessarily have been scheduled.

Section 353.48 Antidumping Duty Order. This section has been amended to specify that where an investigation is continued pursuant to section 774(g) of the Tariff Act of 1930, as amended, and where the final determinations by the Department and the Commission are affirmative, the Department shall not issue an Antidumping Duty Order so long as the suspension agreement remains in force and continues to meet the statutory requirements, and the parties to the suspension agreement carry out their obligations thereunder.

Section 353.49 Security in Lieu of Estimated Duty Pending Early Determination of Duty. Some comments objected to the requirement that information be submitted within seven days of publication of the Order. While it is recognized that this deadline is short, any longer period is administratively infeasible. Further, affected foreign firms can gather and process the requisite data prior to issuance of the Order, thus alleviating much of the time pressure. One comment asserted that paragraph (a)(2) was unclear. It has been redrafted to eliminate any lack of clarity.

Section 353.50 Differences in Determined and Estimated Dumping Duties. Paragraph (d) has been amended to provide that adjustments to be made where the estimated antidumping duty deposited differs from that finally determined to be due. No written comments were received on this section, and it remains unchanged from the proposed regulations.

Section 353.51 Verification of Information; Use of Best Information Available. The section has been amended to reflect several comments which suggested that a party be notified of, and afforded an opportunity to correct, a defect in its submission. The resubmission of information to permit the correction of a deficiency will be allowed so long as the resubmission is made within a period which permits adequate analysis and verification of the information so submitted. A substantial extension of the original time period in most instances would preclude the Secretary from fulfilling his responsibilities under the Tariff Act of 1930, as amended, in the statutorily mandated time limits and, consequently, will not be allowed.

Several other comments criticized the requirement for English translations set forth in paragraph (d). This paragraph remains unchanged, because the regulations already provide for a waiver of the requirement where necessary. The Department will not initially possess an extensive foreign language capability and, consequently, it will not be able to use untranslated submissions in most circumstances.

Section 353.52 Interest on Certain Overpayments and Underpayments. This section sets forth the rate of interest to be paid on certain overpayments and underpayments. No written comments were received on this section, and it remains unchanged from the proposed regulation.

Section 353.53 Administrative Review of Determinations. Paragraph (a) has been redrafted to provide more clearly for an annual review of antidumping duty Findings and Orders and suspended investigations. Paragraph (c) has been amended to reflect the view expressed in some comments that the time limits set forth in paragraph (c) were excessively short. The day on which a response must be received has been extended so as to continue the present practice of permitting thirty days in which to reply. Because the questionnaire relates to an annual review of which the respondent is aware, the thirty-day period should be adequate in all situations.

A new paragraph (e) has been added to indicate the procedures to be applicable with respect to the review of discontinuances which resulted in the conclusion of an investigation prior to January 1, 1980.

Section 353.54 Revocation of Antidumping Duty Finding or Order and Termination of Suspension. This provision has been changed substantially so as to incorporate a number of procedures and principles which have become a matter of practice in the antidumping area.

Some of the changes in the section are designed to reflect concerns expressed in the comments received. Representatives of foreign and importing interests thought that the 3-year period required before revocation or termination was too long. They also stated a preference that the Secretary have no discretion in determining whether to grant a revocation or termination in those instances where either there were no sales at less than fair value of the imported merchandise or exports had ceased for the requisite period. Contrasting views were presented by members of domestic industry who pointed to the possibility that renewed sales at less than fair value or exports immediately after the issuance of a revocation or termination could result in a flagrant violation of the purpose of the revocation or termination and undermine the administration of the law.

The section as now published addresses these concerns and adopts procedures which should more effectively implement the intent of the Trade Agreements Act of 1979. This section provides for a revocation or termination both upon application by an interested party and on the Secretary's own initiative. Where the revocation or termination is issued on the basis of an application made by an interested party, a minimum of two years must have elapsed in which the imported merchandise had not been sold at less than fair value. The two-year period will run from either the date of the issuance of the Antidumping Duty Finding or Order or the date of the preliminary determination (in the case of a termination only the latter is relevant), depending upon whether the party seeking revocation or termination can demonstrate that the imported merchandise has not been sold at less than fair value during the period of an immediately preceding the antidumping duty investigation. Pursuant to paragraph (d), a revocation or termination will not be issued unless the party making application agrees in writing to an immediate suspension of liquidation and reinstatement of the investigation, as appropriate, if circumstances develop which indicate that the merchandise thereafter imported is sold at less than fair value.

Where three years have elapsed and the Secretary has determined that there is no likelihood of a resumption of imports of the merchandise subject to the Finding or Order or suspension or the sales at less than fair value have been eliminated, paragraph (b) authorizes the Secretary to issue a revocation or termination on his own initiative.

The remaining provisions of paragraphs (d) and (e) establish the procedures which have been adopted for revocation of Findings and Orders and termination of suspended investigations. A tentative notice will be issued, and an opportunity for presentation of views will be afforded. Where the Secretary's final decision is to grant a revocation or
from the Act. The Department of Commerce concurs in this conclusion.

Final Regulations

Accordingly, Title 19 of the Code of Federal Regulations is amended as follows:


Stanley J. Marcus,

Deputy Assistant Secretary for Trade Regulation.

1. A new Part 353. Antidumping Duties, is added as set out below:

"PART 353—ANTIDUMPING DUTIES"

Sec.

353.0 Scope.

Subpart A—Definitions

353.1 Relationship of fair value to foreign market value.

353.2 Definition of foreign market value.

353.3 Foreign market value based on price in the country of exportation.

353.4 Foreign market value where sales in the country of exportation are inadequate.

353.5 Foreign market value based on sales to a third country.

353.6 Foreign market value determined by constructive value.

353.7 Foreign market value where sales are made at less than the cost of production.

353.8 Foreign market value of merchandise from state-controlled-economy countries.

353.9 Foreign market value based on sales in a third country by a related company.

353.10 Definition of United States price.

353.11 Definitions of antidumping duty "proceeding," "investigation," "determination" and "order".

353.12 Other definitions.

353.13 Determination of foreign market value.

353.14 Differences in quantities.

353.15 Differences in circumstances of sale.

353.16 Differences in physical characteristics.

353.17 Offering price.

353.18 Fictitious sales.

353.19 Level of trade.

353.20 Sales at varying prices.

353.21 Shipments from intermediate countries.

353.22 Transactions between related persons.

353.23 Disregarding insignificant adjustments; use of averaging and sampling techniques.

353.24 [Reserved]

Subpart B—Access to Information

353.25 Information generally available.

353.26 Ex parte meetings.

353.27 Confidentiality maintained.

353.28 Requests for confidential treatment of information.

353.29 Standards for determining confidentiality of information.

353.30 Limited disclosure of certain confidential information under an administrative protective order.

353.31 Information exempt from disclosure.

Subpart C—Antidumping Procedures and Determinations

Sec.

353.32 Procedure for self-initiation.

353.33 Procedures for initiation by petition.

353.34 Determination of sufficiency of petition.

353.35 Full-scale investigation.

353.36 Preliminary determinations.

353.37 Determination of critical circumstances.

353.38 Final determinations.

353.39 Suspension of antidumping duties.

353.40 Exclusion of particular firms.

353.41 Reimbursement of administration.

353.42 Final determinations.

353.43 Violations of agreements.

353.44 Final determinations.

353.45 Final determinations.

353.46 Submission of information and written views.

353.47 Hearings.

353.48 Antidumping duty order.

353.49 Security in lieu of estimated duty pending early determination of duty.

353.50 Difference in determined and estimated antidumping duties.

353.51 Verification of information; use of best information available.

353.52 Interest on certain overpayments and underpayments.

353.53 Administrative review of determinations.

353.54 Revocation of antidumping duty orders and termination of suspended investigations.

353.55 Reimbursement of antidumping duties.

353.56 Conversion of currencies.

353.57 Entered value not controlling.

Annex I—Antidumping duty findings or orders currently in effect.


§ 353.0 Scope.

This part sets forth procedures and rules applicable to proceedings under Title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1673 et seq.) (hereinafter referred to as "the Act"), relating to the imposition of antidumping duties. Determinations by the Secretary under the Act shall not be considered major federal actions significantly affecting the environment within the meaning of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.) and Executive Order 11514, March 5, 1970, as amended by Executive Order 11981, May 24, 1977, and Executive Order 12114, January 9, 1979.

Subpart A—Definitions

§ 353.1 Relationship of fair value to foreign market value.

Fair value, used during the investigative phase of a proceeding, is intended to be an estimate of foreign market value. Except where specifically noted, all references in this subpart to "foreign market value" should be
considered to apply to "fair value" as well; on the other hand, specific references to "fair value" in this subpart should not be considered to refer to "foreign market value."

§ 353.2 Definition of foreign market value.

For purposes of the Act, the foreign market value of imported merchandise shall be determined in accordance with § 353.3 through 353.9 of this part.

§ 353.3 Foreign market value based on price in the country of exportation.

(a) In general. (1) The foreign market value of merchandise imported into the United States shall ordinarily be determined by the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of importation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase.

(2) In determining the ordinary course of trade, conditions and practices which, for a reasonable time prior to the exportation of the merchandise which is the subject of investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind shall be applicable.

(b) Restricted sales. When home market sales form the basis of comparison to the United States price, they may be used for this purpose whether or not they are restricted, provided, however, that appropriate adjustment for the home market price will be made for such restrictions that affect the value of the merchandise to the purchaser.

§ 353.4 Foreign market value where sales in the country of exportation are inadequate.

(a) In general. If it is established, in a situation other than that provided for in § 353.3, that the representative period chosen for investigation the quantity of such or similar merchandise sold for consumption in the country of exportation is so small in relation to the quantity sold for exportation to countries other than the United States (normally, less than five percent of the amount sold to third countries) as to be an inadequate basis for determining the foreign market value of the merchandise imported into the United States, the foreign market value of the imported merchandise shall be determined either by reference to the price at which such or similar merchandise is sold or offered for sale for exportation to countries other than the United States or by reference to its constructed value.

(b) Preference for third country sales. Foreign market value based on sales to a third country generally will be preferred to foreign market value based on constructed value if adequate information is available and can be verified within the time required.

§ 353.5 Foreign market value based on sales to a third country.

(a) In general. Where based on sales to a third country, foreign market value shall be determined by the price, at the time of exportation, of the merchandise under investigation, at which such or similar merchandise is sold or offered for sale to countries other than the United States, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of importation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase.

(b) Restricted sales. When third country sales form the basis of comparison to United States price, they may be used for this purpose whether or not they are restricted, provided however, that appropriate adjustment of the third country price will be made for such restrictions that affect the value of the merchandise to the purchaser.

(c) The third country selected for such purposes will generally be that single country meeting, in order of preference, the following requirements: (1) the product exported to such country has a greater degree of similarity to the product exported to the United States than does the product exported to other countries, provided the volume of sales to such country is deemed adequate; (2) the volume of sales in the country is the largest sales volume to any country outside the home market or the United States; and (3) the market in such country is, in terms of organization and development, most like the United States market.

(d) If sales to a single country selected under paragraph (c) of this section do not provide an adequate sample, sales to additional countries selected using such criteria may be aggregated.

§ 353.6 Foreign market value determined by constructed value.

(a) Method of determining constructed value. Where based on constructed values, foreign market value shall be determined from the best available information, by adding—

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

(2) An amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general character or kind of merchandise under consideration which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, except that the amount for general expenses shall not be less than 10 percent of the cost as defined in paragraph (a)(1) of this section and the amount for profit shall not be less than 8 percent of the sum of such general expenses and cost; and

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

(b) Transactions with related parties. Direct or indirect transactions between related parties (as defined in section 773(e)(3) of the Act) may be disregarded if, in the case of any element of value required to be considered pursuant to paragraph (a)(1) of this section, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration of the merchandise subject of the investigation. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, the determination of the amount required to be considered shall be based...
on the best evidence available as to what the amount would have been if the transaction had occurred between non-related parties.

§ 353.7 Foreign market value where sales are made at less than the cost of production.

(a) Method for determining whether sales are at less than cost. Whenever the Secretary has reasonable grounds to believe or suspect that the price at which such or similar merchandise is sold for consumption in the country of exportation as determined under § 353.3, or as appropriate, the price at which such or similar merchandise is sold for exportation to countries other than the United States as determined under § 353.5, or the price at which such or similar merchandise is sold by facilities outside the country of exportation by a related company as determined under § 353.6, represents a price which is less than the cost of producing the merchandise, the Secretary shall disregard such sales in the determination of foreign market value if such sales:

(1) Have been made over an extended period and in substantial quantities, and for that period costs, expenses, and profits as reflected in the prices so obtained are not reflective of the costs, expenses, and profits as reflected in the prices so obtained.

(b) Use of constructed value where above cost sales are inadequate. Whenever sales are disregarded by virtue of having been made at less than the cost of production, and the remaining sales in the home market or, as appropriate, to third countries or by facilities outside the country of exportation by a related company, made at not less than the cost of production, are determined to be inadequate as a basis for the determination of foreign market value, the Secretary shall determine foreign market value on the basis of the constructed value as determined under §353.8. The cost of production will be computed on the basis of the best available information of costs of materials, labor and general expenses, excluding profit, incurred in producing such or similar merchandise.

§ 353.8 Foreign market value of merchandise from state-controlled-economy countries.

(a) In general. If, on the basis of the information available, it is determined that the economy of the country from which the merchandise is exported is state-controlled to an extent that sales or offers of sales of such or similar merchandise in that country or to countries other than the United States do not permit a determination of foreign market value under §353.3, 353.5, or 353.9, foreign market value shall be determined on the basis of the normal costs, expenses, and profits as reflected in order of preference by:

(1) The prices, determined in accordance with § 353.3 or 353.5, at which similar merchandise produced in a non-state-controlled-economy country or countries is sold either (i) for consumption in the home market of that country or countries, or (ii) to other countries, including the United States; or

(2) The constructed value of such or similar merchandise in a non-state-controlled-economy country, determined in accordance with § 353.6.

(b) Comparability of economies.

(1) The prices as determined under paragraph (a)(1), or the constructed value as determined under paragraph (a)(2), shall be determined, to the extent possible, from the prices or costs in a non-state-controlled-economy country or countries at a stage of economic development comparable to the state-controlled-economy country from which the merchandise is exported.

(2) If no non-state-controlled-economy country of comparable economic development can be identified, then the prices or constructed value as determined in another non-state-controlled-economy country or countries other than the United States shall be used, suitably adjusted for known differences in the costs of materials and labor.

(3) If neither paragraph (b)(1) nor (b)(2) provides an adequate basis for determining foreign market value, the constructed value of such or similar merchandise, then the prices or constructed value, as determined from the sales or production of such or similar merchandise in the United States, shall be used.

(c) Use of constructed value. If such or similar merchandise is not produced in a non-state-controlled-economy country which is concluded to be comparable in terms of economic development to the state-controlled-economy country from which the merchandise is exported, the constructed value of such or similar merchandise shall be determined from the costs of specific objective components or factors of production incurred in producing the merchandise in question, including, but not limited to, hours of labor required, quantities of raw materials employed, and amounts of energy consumed, if such information is obtained from the producer of the merchandise in the state-controlled-economy country under investigation, and verification of such information in the state-controlled-economy country is concluded to the satisfaction of the Secretary. Such components or factors shall be valued and such values verified in a non-state-controlled-economy country determined to be reasonably comparable in economic development to the state-controlled-economy country under investigation. To the values thus obtained, there shall be added an amount for general expenses and profit, as required by section 773(e)(1)(B) of the Act and the cost of all containers and coverings and other expenses, as required by section 773(e)(1)(C) of the Act.

§ 353.9 Foreign market value based on sales in a third country by a related company.

The determination of foreign market value of merchandise sold by those multinational corporations described in section 773(d) of the Act shall be made in accordance with provisions of that section.

§ 353.10 Definition of “United States price.”

(a) In general. For purposes of this part, the term “United States price” means the purchase price or the exporter’s sales price of the merchandise under investigation, as appropriate.

(b) Purchase price. “Purchase price” means the price at which the merchandise under investigation is purchased, or agreed to be purchased, prior to the date of importation, from the manufacturer or producer of the merchandise for exportation to the United States. Appropriate adjustments for costs and expenses under paragraph (d) of this section shall be made if they are not reflected in the price paid by the person by whom, or for whose account, the merchandise is imported. Whenever purchase price is used and there is reason to believe that the price to the person by whom or for whose account the merchandise is imported does not reflect the costs and expenses incident to bringing the merchandise from the country of exportation, then appropriate adjustments for such costs and expenses shall be made under paragraph (d) of this section.

(c) Exporter’s sales price. “Exporter’s sales price” means the price at which merchandise under investigation is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, as adjusted under paragraphs (d) and (e) of this section.
(d) Adjustments to purchase price and exporter's sales price. Purchase price and exporter's sales price shall be adjusted by being—

(1) increased by—

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

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

(iii) The amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes and duties are not included in the price of such or similar merchandise when sold in the country of exportation; and

(iv) The amount of any countervailing duty imposed on the merchandise to offset an export subsidy; and

(2) Reduced by—

(i) Except as provided in paragraph (d)(1)(iv) this section, the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States; and

(ii) The amount, if included in such price, of any export tax, duty, or other charge imposed by the country of exportation on the exportation of the merchandise to the United States other than an export tax, duty, or other charge described in section 771(b)(C) of the Act.

(e) Additional adjustments to exporter's sales price. For purposes of this section, the exporter's sales price shall also be adjusted by being reduced by the amount, if any, of—

(1) Commissions for selling in the country under consideration. Further, reasonable allowances will be made for differences in quantities, to the extent that it is

(2) Expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, and attributable under generally accepted accounting principles to the particular merchandise under consideration; and

(3) Any increased value resulting from a process of manufacture or assembly performed on the imported merchandise after the importation of the merchandise and before its sale to a person who is

not the exporter of the merchandise, which value generally will be determined from the costs of material, labor and other expenses incurred in such manufacture or assembly.

§ 353.11 Definitions of antidumping duty

"Proceeding," "Investigation," "Determination" and "Order."

(a) A "proceeding" refers to that time from the filing of a petition (or publication of a notice of self-initiation under section 732(a) of the Act) until the publication of the earliest of (1) a notice of termination, (2) a negative determination that has the effect of terminating the administrative proceedings; or (3) a notice of revocation of an Order.

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

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

(d) An "Order" is a notice issued following final determinations of sales at less than fair value and injury, which provides for the imposition of antidumping duties.

§ 353.12 Other definitions.

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

(b) Industry. "Industry" means the domestic producers as a whole of a like product in the United States.

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

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

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

(3) A trade or business association, a majority of whose members are producers of, or wholesalers of, a like product in the United States.

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

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


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

(h) Department. "Department" means the Department of Commerce.

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


§ 353.13 Determination of foreign market value.

In determining foreign market value, the criteria in § 353.14 through 353.23 must apply. The person who alleges entitlement to any adjustment pursuant to § 353.14 through 353.19 must establish entitlement thereto to the satisfaction of the Secretary.

§ 353.14 Differences in quantities.

(a) In general. In comparing the United States price with such applicable criteria as sales or offers, on which a determination of foreign market value is to be based, comparisons normally will be made on sales of comparable quantities of the merchandise under consideration. Further, reasonable allowances will be made for differences in quantities, to the extent that it is
established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to sales of different quantities of the quantities sold. In determining allowances for differences in quantity, consideration will be given, among other things, to the practice of the industry in the country of the different United States market (or third country market) where sales to third countries are the basis for comparison) discounts for quantity sales which are available to those who purchase in the ordinary course of trade.

(b) Criteria for allowances. Allowances for price discounts based on quantitative differences in sales ordinarily will not be made unless:

(1) Six month rule. The exporter during the period covered by the antidumping investigation as established under §353.38 (or during such other period as investigation shows is more representative) will ordinarily be granted quantity discounts of at least the same magnitude with respect to 20 percent or more of such or similar merchandise sold in the home market (or in third country markets when sales to third countries are the basis for comparison) in the ordinary course of trade.

(2) Cost justification. The exporter can demonstrate that the discounts are warranted on the basis of savings which are specifically attributable to the production of the different quantities involved.

(3) Use in determining foreign market value. If the exporter satisfies the conditions in paragraph (b) of this section the price of such or similar merchandise sold at a discount in the home market (or in third country markets when third countries are the basis for comparison) will ordinarily be used as the basis for computing the foreign market value of merchandise for comparison with comparable quantities sold in the United States. If the exporter does not satisfy the conditions in paragraph (b) of this section, any sales of such or similar merchandise in the home market (or in third country markets when third countries are the basis for comparison) which are made at a discount will be used in calculating a weighted average in accordance with §353.20.

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

§353.15 Differences in circumstances of sale.

(a) In general. In comparing the United States price with the sales, or other criteria applicable, on which criteria is the foreign market value is to be based, reasonable allowances will be made for bona fide differences in the circumstances of the sales compared to the extent that it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences. Differences in circumstances of sale for which such allowances will be made are limited, in general, to those circumstances which bear a direct relationship to the sales which are under consideration.

(b) Examples. Examples of differences in circumstances of sale for which reasonable allowances generally will be made are those involving differences in credit terms, guarantees, warranties, technical assistance, servicing, and assumption by a seller of a purchaser's advertising or other selling costs. Reasonable allowances also generally will be made for differences in commissions. Allowances generally will not be made for differences in advertising or other selling costs of a seller, unless such costs are attributable to a later sale of the merchandise by a purchaser.

(c) Special rule. Notwithstanding the criteria for adjustments for differences in circumstances of sale set forth in paragraphs (a) and (b) of this section, reasonable allowances for other selling expenses generally will be made in cases where a reasonable allowance is made for commissions in one of the markets under consideration and no commission is paid in the other market under consideration, the amount of such allowance being limited to the actual other selling expenses incurred in the one market, or the total amount of the commission allowed in such other market, whichever is less. In making comparisons using exporter's sales price, reasonable allowance will be made for all actual selling expenses incurred in the home market up to the amount of the selling expenses incurred in the United States market.

(d) Determination of allowances. In determining the amount of the reasonable allowances for any differences in circumstances of sale, the Secretary will be guided primarily by the cost of such differences to the seller, but, where appropriate, he may also consider the effect of such differences upon the market value of the merchandise.

§353.16 Differences in physical characteristics.

In comparing the United States price with the foreign price in the home market, or for exportation to countries other than the United States in the case of similar merchandise, due allowance shall be made for differences in the physical characteristics of the merchandise in the markets being compared. In this regard, the Secretary will be guided primarily by the differences in cost of production, to the extent that it is established to his satisfaction that the amount of any price differential is wholly or partly due to such differences, but, when appropriate, the effect of such differences upon the sales of the merchandise in the United States may also be considered. In the case of merchandise which does not lend itself to comparison with other merchandise for the purpose of this section, any method reasonably calculated to reflect the impact on cost or value of any differences in the merchandise under consideration may be used. Differences in costs of producing merchandise with identical physical characteristics as end products will not be considered appropriate adjustments.

§353.17 Offering price.

In determining foreign market value, offers generally will be considered only in the absence of sales. An offer the acceptance of which is not reasonably expected shall not be deemed an offer.

§353.18 Fictitious sales.

In determining foreign market value, no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, will be taken into account.

§353.19 Level of trade.

The comparison of the United States price with the applicable price in the market of the country of exportation (or, as the case may be, the price to or in third country markets) generally will be made at the same commercial level of trade. However, if it is found that the sales of the merchandise in the United States or in the applicable foreign market at the same commercial level of trade are insufficient in number to permit an adequate comparison, the comparison will be made at the nearest comparable commercial level of trade and appropriate adjustments will be made for differences affecting price comparability.

§353.20 Sales at varying prices.

(a) Where the prices of the sales which are being examined for a determination of foreign market value

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vary (after allowances provided for in §§ 353.14, 353.15, 353.16, and 353.19), the determination of foreign market value normally will be based upon the weighted average of the sales prices of all merchandise used to determine foreign market value; provided that where sales are made at different levels of trade, the calculation of foreign market value, in accordance with § 353.19, will be on the basis of sales made at the same or nearest comparable level of trade as those at which the sales in question to the United States are made.

(b) If not less than 80 percent of all sales in the home market (or to third countries, if appropriate) during the period of investigation were made at the same price, weighted averages of all sales will not be used and foreign market value will be based upon the sales at that price.

(c) If the provisions of paragraph (b) of this section do not apply and weighted averages of the prices are determined to be inappropriate, the Secretary will use any other method for determining value which he deems appropriate.

(d) No sales disregarded pursuant to § 353.7 shall be used for purposes of this section.

§ 353.21 Shipments from intermediate countries.

If the merchandise which is the subject of the investigation is not imported directly from the country of origin, but is merely transshipped through the country of shipment, the price at which such or similar merchandise is sold in the country of origin will be used in the determination of foreign market value.

§ 353.22 Transactions between related persons.

(a) Sales agencies. If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 771(13) of the Act, the price at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in the determination of foreign market value.

(b) Sales to related persons. If such or similar merchandise is sold, or in the absence of sales, offered for sale in the home market or, as appropriate, to third countries, to a person related to the seller of the merchandise in any of the respects described in section 771(13) of the Act, the price at which such or similar merchandise is sold or, in the absence of sales, offered for sale to such person ordinarily will not be used in the determination of foreign market value unless such sales are demonstrated to the satisfaction of the Secretary to be at prices comparable to those at which similar merchandise is sold to persons unrelated to the seller.

§ 353.23 Disregarding insignificant adjustments; use of averaging or sampling techniques.

(a) Insignificant adjustments. In determining the adjustments to be made to foreign market value pursuant to §§ 353.14 to 353.22, adjustments which are insignificant in relation to the price or value of the affected transactions may be disregarded. Ordinarily, individual adjustments having an ad valorem effect of less than 0.33 percent or any group of adjustments having an ad valorem effect of less than 1.0 percent will be disregarded.

(b) Averaging or sampling techniques. The Secretary may use averaging or generally recognized sampling techniques in determining foreign market value in any proceeding in which either a significant volume of sales is involved or a significant number of adjustments to prices is required.

§ 353.24 (Reserved)

Subpart B—Access to information

§ 353.25 Information generally available.

(a) Duty to maintain material in record. The Department shall maintain the official record of all proceedings.

The record shall consist of a copy of all information presented to or obtained by the Secretary during the course of the proceeding, including all governmental memoranda pertaining to the proceeding, memoranda of ex parte meetings, all determinations and notices thereof published in the Federal Register, and all transcripts or records of conferences or hearings. (See section 516A(b)(2) of the Act.) The record will contain three types of materials:

(1) Materials protected from disclosure:

(2) Non-confidential material submitted by any person other than an employee or officer of the United States Government; and

(3) Non-confidential and non-privileged material submitted or developed by an employee or officer of the United States Government.

(b) Examination and copying of information. In general, all information in subparagraphs (2) and (3) of the record described in paragraph (a) will be available for inspection or copying at the convenience of any person during business hours. With respect to documents prepared by an officer or employee of the United States Government, factual matters, as distinguished from advice, recommendations, opinions and evaluations, contained in such documents will be made available by summary or otherwise on the same basis as information contained in documents submitted by other persons. The fees charged for providing copies of documents shall be the same as for providing copies of documents pursuant to requests made under the Freedom of Information Act (5 U.S.C. 552). (See 15 CFR 4.9.)

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

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

§ 353.26 Ex parte meetings.

A written memorandum will be prepared of any ex parte meeting between (a) any interested party or other person providing factual information relating to a determination in the proceeding and (b) the person to whom the authority to make determinations under the Act has been delegated (the Assistant Secretary for Trade Administration) or the person making a final recommendation for decision to such person (the Deputy Assistant Secretary for Import Administration). Such memorandum
§ 353.27 Confidentiality maintained.

Except as provided in § 353.30, information submitted to the Department which is designated as confidential by the person submitting it shall not be disclosed to any person (other than an officer or employee of the United States Government who is directly concerned with carrying out the investigation in connection with which the information is submitted) without the consent of the person submitting it. (§ 353.28(e) sets forth the procedures followed where a request for confidential treatment is denied, in whole or in part.)

§ 353.28 Requests for confidential treatment of information.

(a) Submission and contents of requests. Any person who submits information in connection with a proceeding may request that such information, or any specific part thereof, be treated as confidential. Any information submitted which is not designated as confidential by the person submitting it normally shall not be treated as confidential. Information which is subject to a request for confidential treatment shall be set forth on separate pages and each such page shall be clearly marked "Confidential Treatment Requested." Each separate request for confidential treatment of information, other than information submitted in confidence by a foreign government which is restricted from disclosure pursuant to statute or Executive Order, shall be accompanied by a full statement of the reason or reasons why the submitting party believes that each piece of information subject to such request is entitled to confidential treatment within the guidelines set forth in § 353.29. All requests for confidential treatment shall be accompanied by one of the following:

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

(2) A statement by the person submitting the information that the information is not susceptible to such a summary or presentation, accompanied by a full statement of the reasons supporting this conclusion; or

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

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

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

(d) Treatment of information where request for confidential treatment is granted. (1) If a request for confidential treatment of information is granted, the information covered thereby will not be made available, except pursuant to § 353.30, for inspection or copying:

(i) By any person other than an officer or employee of the United States Government directly involved with carrying out the investigation in connection with which the information is submitted, or

(ii) By a person who has been specifically authorized to receive such information by the person who requests the confidential treatment.

(2) Information for which confidential treatment is granted shall be made available to officers and employees of the Commission only upon confirmation that the confidentiality of such information will be maintained and that it will not be disclosed, either publicly or under an administrative protective order, without the express written consent of the Secretary.

(3) Information submitted in confidence by a foreign government shall be made available only to the extent, and under the procedures, provided in Executive Order 12065 of June 28, 1978 (43 FR 28949), or any superseding or amending Order.

(e) Treatment of information where request for confidential treatment is denied. Should it be determined that any part of the material for which confidential treatment has been requested (1) does not warrant confidential treatment in whole or in part, (2) is in a form which cannot reasonably be associated with, or otherwise used to identify, the operations of a particular person and thus should not be treated as confidential, or (3) that information claimed not susceptible to a non-confidential summary is in fact capable of such treatment, the Department shall
notify the person who submitted the information. Unless the person submitting the information thereafter agrees that the information (including any summarized or approximated presentation thereof) may be treated as non-confidential information, or provides a summary of matters found to be capable of such treatment, such information (including any summarized or approximated presentation thereof) shall be returned to the submitting person and not considered in the proceeding.

§ 353.29 Standards for determining confidentiality of information.

(a) In general. Information ordinarily will be considered to be privileged or confidential only if its disclosure would be likely:

(1) To cause substantial harm to the competitive position of the person submitting the information;
(2) To have a substantial adverse effect upon the person supplying the information or upon the person from whom the information was obtained; or
(3) To impair the ability of the United States Government to obtain in the future necessary information, not required by law to be provided, from the same person or others similarly situated.

(b) Information ordinarily regarded as appropriate for disclosure. Except as provided in paragraph (c) of this section, information ordinarily will be regarded as appropriate for disclosure if it relates to:

(1) Prices, market conditions, terms of sale or similar information that is published or otherwise available to the public;
(2) Laws, regulations, Executive Orders, or other official documents which are published in the country by which adopted, as well as translations thereof; or
(3) Information submitted by the petitioner or other domestic interested party concerning the operations of a foreign interested party, except to the extent that it might disclose the identity of confidential sources.

(c) Information ordinarily regarded as privileged or confidential. Information ordinarily will be regarded as privileged or confidential if it would disclose:

(1) Business or trade secrets;
(2) Production costs;
(3) Distribution costs;
(4) Prices of actual transactions or offers;
(5) The names of particular customers or suppliers; or
(6) The names of particular persons from whom confidential information was obtained, if nondisclosure of the names has been requested and approved by the Secretary.

§ 353.30 Limited disclosure of certain confidential information under an administrative protective order.

(a) In general. (1) Any confidential information (other than information submitted in confidence by a foreign government which is restricted from disclosure pursuant to statute or Executive Order), including some or all of the information described in § 353.29(c), may be made available to an attorney or other representative under a protective order as described in paragraph (b) of this section. Forms for submitting requests for disclosure pursuant to a protective order incorporating the terms of this regulation will be made available. The application for disclosure pursuant to protective order filed by an attorney or other representative of a party to the proceeding may be prescribed for breach of the protective order.

(ii) Indicate the procedures to be followed to avoid unauthorized disclosure of the information requested; and

(iii) Demonstrate good cause for release of such information.

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

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

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

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

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

(i) Personnel of agencies of the United States Government directly responsible for conducting the proceeding in question who are involved in such proceeding;
(ii) The person from whom the information was obtained;

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

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

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

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

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

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

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

(1) May subject the following persons to disbarment from practice before any constituent agency of the Department for up to seven years following publication of a determination that the order has been breached:

(i) The person submitting the statement;

(ii) Any firm of which such person is a partner, associate, or employee; and

(iii) Such person's partners, associates, employer and employees;

(2) Shall, in the case of an attorney, lead to referral of such breach to the
shall be afforded a reasonable opportunity to be heard before the determination is made.

§ 353.31 Information exempt from disclosure.

Information which might otherwise be available under this subpart shall be exempt from disclosure if it relates to any matter which is required to be kept confidential pursuant to privilege, statute or Executive Order. This includes information that has been provided to the United States in confidence by a foreign government or international organization of governments. Such information currently is restricted from disclosure pursuant to Executive Order No. 12065 of June 28, 1978 (43 FR 28949).

Subpart C—Antidumping Procedures and Determinations

§ 353.35 Procedure for self-initiation.

(a) In general. Whenever the Secretary determines, from information available to him, that an antidumping investigation is warranted into the question of whether the antidumping duty imposed by section 731 of the Act should be imposed with respect to a particular class or kind of merchandise imported into the United States, he shall, after providing an opportunity for consultation to the signatory or signatories to the Agreement on Antidumping which may be affected by any affirmative determination, publish in the Federal Register a “Notice of Initiation of Antidumping Investigation.” The Notice is to include:

(1) A description of the merchandise involved;

(2) The name of the country of origin;

(3) A summary of the information contained in the petition on behalf of an industry which is the subject of the proceeding;

(4) A statement that the investigation will be terminated without further notice upon publication of a notice of a preliminary or final negative injury determination by the Commission.

(b) Information provided to the Commission. Upon initiation of the investigation, the Commission will be notified promptly and will be provided with such information as is available relating to the matter under investigation, including any available information on the amount by which the foreign market value exceeds United States price and the volume of trade. Information for which confidential treatment has been granted by the Secretary shall be made available to the Commission only upon confirmation that the confidentiality of such information will be maintained and that it will not be disclosed, either publicly or under an administrative protective order, without the express written consent of the Secretary.

§ 353.36 Procedures for initiation by petition.

(a) Contents of petition. Any interested party, as defined in subparagraph (C), (D), or (E) of section 771(9) of the Act, who has reason to believe that merchandise imported into the United States is being, or is likely to be, sold at less than fair value, by reason of which an industry in the United States is being or is likely to be materially injured or its establishment is being materially retarded, may file a petition on behalf of an industry pursuant to section 731 of the Act with the Secretary, Attention: Assistant Secretary for Trade Administration, Room 3328, Department of Commerce, Washington, D.C. 20230, requesting the imposition of additional duties in an amount equal to the amount by which the foreign market value exceeds the United States price. The petition shall contain, or be accompanied by, information, to the extent reasonably available to the petitioner, in substantially the following form:

(1) The name and address of the petitioner and any other person, firm, or association the petitioner represents, if appropriate;

(2) The industry on whose behalf the petition is filed, including the names of other enterprises included in such industry;

(3) A statement indicating whether the applicant has filed, or is filing, for import relief pursuant to section 201 of the Trade Act of 1974 (19 U.S.C. 2251), or has initiated proceedings pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337, 1337a), section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862), or section 201 of the Trade Act of 1974 (19 U.S.C. 2411) with respect to the merchandise which is the subject of the proceeding;

(4) A detailed description of the imported merchandise in question, including its technical characteristics and uses, and, where appropriate, its tariff classification under the Tariff Schedules of the United States;

(5) The name of the country or countries from which the merchandise is being, or is likely to be, exported to the United States and, if the merchandise is
produced in a country other than that from which it is exported, the name of the country in which it is produced;

(6) The names and addresses of all known foreign enterprises believed to be manufacturing, producing or exporting the merchandise in question;

(7) All pertinent facts as to the price at which the foreign merchandise is sold or offered for sale in the United States and in the home market in which produced or from which exported, including information concerning transportation and insurance charges, and if appropriate, information regarding sales in third countries or the cost of producing the merchandise. Petitioners unable to furnish information on foreign sales or costs may present information concerning U.S. domestic producers' costs adjusted for differences in the foreign country in question from information publicly available;

(8) If the merchandise is being exported from a country which is considered to be a state-controlled-economy country, any information pertaining to the price or prices at which such or similar merchandise of a non-state-controlled-economy country or countries, considered to be comparable in terms of economic development to the state-controlled-economy country, is sold for consumption in the home market of that country or countries or to other countries (including the United States), or the constructed value of such or similar merchandise in a non-state-controlled-economy-country, determined in accordance with §335.8;

(9) Evidence, if any, that sales in the home market are being made at a price which represents less than the cost of production of the merchandise, and the circumstances under which such sales are made;

(10) The volume and value of imports of the merchandise from the country in question in the most recent two-year period, and also other periods if the petitioner believes such other periods to be more representative, or, if the merchandise is not presently imported into the United States or is not imported in significant quantities, information as to the likelihood of its importation;

(11) The names and addresses of enterprises believed to be importing the merchandise;

(12) The names and addresses of other enterprises in the United States engaged in the production, manufacture or sale of like merchandise. If numerous, information need not be provided with respect to any enterprises that accounted for less than 2 percent of domestic production, manufacture or sale of such merchandise during the most recent 12-month period;

(13) Information as to the material injury or threat thereof to, or the material retardation of the establishment of, a United States industry by reason of the imported merchandise alleged to be sold at less than fair value, as described in 19 CFR 207.11 and 207.26;

(14) If "critical circumstances" are alleged, information should be presented—(A) as to a history of dumping or (B) that the importer knew or should have known the exporter was selling at less than fair value, and (C) that injury which is difficult to repair is caused by reason of massive imports in a relatively short period; and

(15) Any documentation on which petitioner relies in making its petition.

Forms for the submission of petitions may be adopted from time to time. The use of such forms shall not be mandatory, provided the information required thereby and reasonably available to the petitioner is otherwise included in the petition.

(b) Translation to English. Unless such requirement is waived in individual cases, any information submitted in the petition or in support thereof, which is in a foreign language, must be accompanied by an English translation.

(c) Simultaneous Filing with Commission. The Petitioner shall file a copy of the petition with the Commission on the same day as the petition is filed with the Secretary and shall so certify in submitting the petition to the Secretary.

(d) Confidentiality of information. Any petition which contains information for which confidential treatment has been requested and which is essential to support the petition will not be considered to have been received in acceptable form unless the requirements of section 335.23(e) are met.

(e) Amendment of petition. Upon timely receipt of additional information, the Secretary shall allow amendment of the petition. Any such amendments must be filed with the Commission on the same day as they are filed with the Secretary.

(f) Form and number of copies. The petition and, to the extent feasible, all supporting information, shall be submitted on letter-size paper, double spaced, typewritten or printed, in at least 10 copies.

(g) Notification of affected country's representative. Upon receipt of a petition, a non-confidential copy with a non-confidential summary of confidential data contained in the petition shall promptly be delivered to a representative in Washington, D.C. of the affected country or countries in which merchandise subject to the investigation is manufactured or produced.

(h) Additional information concerning requirements for petitions. Additional information concerning requirements for petitions may be obtained by contacting the Assistant Secretary for Trade Administration. Room 3850, Department of Commerce, Washington, D.C. 20230; (202) 377-2687.

§353.37 Determination of sufficiency of petition.

(a) Determination of sufficiency. Within 20 days after a petition is filed under §353.36, a determination shall be made by the Secretary on the sufficiency of the petition. A petition is considered to be filed at the time it is received by the Secretary.

(b) Notice. If a petition properly alleges the basis on which antidumping duties may be imposed under section 731 of the Act, contains information reasonably available to the petitioner supporting the allegations, and is filed by an interested party described in subsection (C), (D) or (E) of section 771(9) of the Act, an investigation shall be initiated and a notice of "Initiation of Antidumping Investigation" shall be published in the Federal Register. Unless otherwise stated in the notice, the investigation will relate to all merchandise of the class or kind in question from the exporting country. The notice shall contain a description of the merchandise subject to the investigation, based on consultation between the Secretary and the Commission.

(c) Insufficiency of petition. If it is determined that a petition does not properly allege the basis on which antidumping duties may be imposed under section 731 of the Act, does not contain information reasonably available to the petitioner supporting the allegations, or is not filed by an interested party described in subsection (C), (D) or (E) of section 771(9) of the Act, the petition shall be dismissed and the proceeding terminated. The petitioner shall be notified in writing of the reasons for dismissal, and a notice of "Dismissal of Antidumping Petition" shall be published in the Federal Register, which shall summarize the reasons for dismissal of the petition.

(d) Notice to Commission. A copy of any determination hereunder shall be furnished promptly to the Commission. If the investigation is initiated, such information as has been received relating to the matter under investigation shall be made available to the Commission. Information for which confidential treatment has been granted by the Secretary shall be made available to the Commission.
available to the Commission only upon confirmation that the confidentiality of such information will be maintained and that it will not be disclosed, either publicly or under an administrative protective order, without the express written consent of the Secretary.

§ 353.38 Full-scale investigation.
(a) Upon publication of the notice of “initiation of anti-dumping investigation,” the Secretary shall proceed promptly to obtain such information as may be necessary for preliminary and final determinations of sales at less than fair value. The Secretary normally will examine at least 60 percent of the dollar volume of exports to the United States from any country subject to an antidumping investigation. Ordinarily the Secretary will require a foreign manufacturer, producer, or exporter subject to the investigation to submit pricing information covering a period of at least 150 days prior to, and 30 days after, the first day of the month during which the petition was received in acceptable form. The Secretary may, however, require the submission of pricing information for such other period as he deems necessary and he may also require the submission of pricing information on a current basis during the course of an investigation. Where appropriate, cost information also will be required.

(b) When the Secretary examines less than 85 percent by dollar volume of the exports to the United States of the merchandise subject to the investigation, the Secretary will inform interested parties that foreign manufacturers, producers, or exporters and what percentage of total exports to the United States are being examined.

§ 353.39 Preliminary determinations.
(a) In general. Within 180 days after the date on which a petition is filed under section 732(b) of the Act, or an investigation is commenced under section 732(a) of the Act, but not before an affirmative preliminary determination by the Commission under section 735(a) of the Act.

(1) A preliminary determination shall be made, based upon the best information available at the time of the determination, as to whether there is a reasonable basis to believe or suspect that foreign merchandise which is the subject of the investigation is being sold or is likely to be sold at less than fair value; and

(2) If the determination is affirmative, the amount by which the foreign market value exceeds the United States price shall be estimated and stated.

Notice of the determination, the parties affected, and the estimated amount by which the foreign market value exceeds the United States price shall be published in the Federal Register. The determination shall be mailed or otherwise delivered to all parties to the proceeding and the Commission.

(b) Request for extension by petitioner. If a request for an extension, stating the reasons for the request, is received from the petitioner no later than 25 days before the preliminary determination would otherwise be required under section 733(b) of the Act, the preliminary determination may be postponed until not later than the 210th day after the date on which the petition is filed. Upon acting on such a request, a notice of “Postponement of Preliminary Determination” shall be published in the Federal Register, stating that it has been made at the petitioner’s request.

(c) Extraordinarily complicated cases. (1) If a case is determined to be extraordinarily complicated, the preliminary determination shall be made no later than the 210th day after the petition is filed under section 732(b) of the Act, or an investigation is commenced under section 732(a) of the Act.

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

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

(ii) The case is extraordinarily complicated by reason of (A) the number and complexity of the transactions under investigation or the adjustments to be considered. (B) the novelty of the issues presented, or (C) the number of firms whose activities must be investigated; and

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

(3) All parties to the proceeding shall be notified in writing of any determination to treat the case as “extraordinarily complicated” not later than 20 days before the date on which the preliminary determination would otherwise be required under section 733(b) of the Act. If the Secretary determines that such a determination, a notice of “Postponement of Preliminary Determination” shall be published in the Federal Register, which notice shall summarize the reasons for the postponement.

(d) Waiver of verification. Within 75 days after the initiation of an investigation, an official designated for such purpose by the Secretary shall review the information received during the first 60 days of the investigation. If
injury determination shall be made available to the Commission. Information for which confidential treatment has been granted by the Secretary shall be made available to the Commission only upon confirmation that the confidentiality of such information will be maintained and that it will not be disclosed, either publicly or under an administrative protective order, without the express written consent of the Secretary.

§ 153.40 Critical circumstances determinations.

(a) Determination. If, not less than 30 days before the date on which a final determination is due, a petitioner alleges critical circumstances, then at the time the preliminary determination is made or, if such determination is due within 20 days or has already been made, then within 10 days after it is received, a determination shall be made, on the basis of the best information available at the time, whether there is a reasonable basis to believe or suspect that:

(i) There is a history of dumping in the United States of any class or kind of merchandise which is the subject of the investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise at less than fair value:

and

(b) Notice of Commission. An antidumping investigation may be suspended at any time upon withdrawal by the petitioner of the petition on which the investigation was initiated, notice to all other parties to the proceeding and consultation with the Commission. Such investigation shall be terminated unless it is determined that such termination is in the public interest. Notice of any determination shall be published in the Federal Register, together, where appropriate, with a copy of any correspondence exchanged with the petitioner withdrawing the petition and the investigation was terminated.

§ 153.41 Termination of investigation.

(a) Termination upon withdrawal of petition. An antidumping investigation may be terminated at any time upon withdrawal by the petitioner of the petition. An investigation shall be terminated where the investigation was terminated. An investigation shall be terminated unless it is determined that such termination is in the public interest. Notice of any determination shall be published in the Federal Register, together, where appropriate, with a copy of any correspondence exchanged with the petitioner withdrawing the petition and the investigation was terminated.

(b) Termination upon negative determination. An investigation shall be deemed terminated, without further comment or action, upon publication of any negative final determination, or a negative preliminary or final determination by the Commission on the issue of injury.

§ 153.42 Suspension of investigation.

(a) Agreements to eliminate completely sales at less than fair value or to cease exports. An investigation may be suspended at any time before a final determination if the exporters of the merchandise which is the subject of the investigation who account for substantially all of the imports of the merchandise which is the subject of the investigation agree:

(1) To cease exports of the merchandise to the United States within 6 months after the date on which the investigation is suspended, or

(2) To revise their prices promptly to eliminate completely any amount by which the estimated foreign market value of the merchandise which is the subject of the agreement exceeds the weighted average amount by which the estimated foreign market value exceeded the United States price for all less-than-fair-value entries of the exporter examined during the course of the investigation.

(b) Agreements eliminating injurious effect. (1) Generally. An investigation may be suspended at any time before a final determination if, upon the filing of an agreement to revise prices from exporters accounting for substantially all of the imports of the merchandise which is the subject of the investigation, if it is determined:

(i) Extraordinary circumstances are present; and

(ii) The agreement will eliminate completely the injurious effect of the exports to the United States of the merchandise which is the subject of the investigation.

(2) Additional requirements. No agreement under this subsection may be accepted unless:

(i) The suppression or undercutting of price levels of like domestic products by imports of the merchandise will be prevented; and

(ii) For each entry of each exporter the amount by which the estimated foreign market price exceeds the United States price will not exceed 15 percent of the weighted average amount by which the estimated foreign market value exceeded the United States price for all less-than-fair-value entries of the exporter examined during the course of the investigation.

(c) Definition of "substantially all." For purposes of section 734(b) and (c) of the Act, exporters who account for "substantially all" of the imports in question shall mean exporters who have accounted for no less than 85 percent by volume of the subject merchandise imported into the United States during the period of investigation, or such other recent, representative period determined appropriate. The number and identity of affected exporters shall be considered no less frequently than once annually in connection with the determination required under section 751 of the Act, and, if appropriate, additional or different exporters may be required to furnish assurances to demonstrate the applicability of the assurance to the requisite percentage of the affected trade.

(d) Definition of "extraordinary circumstances." For purposes of section 734(c) of the Act, "extraordinary circumstances" shall mean circumstances in which (1) suspension of the investigation will be more beneficial to the domestic industry than continuation of the investigation, and (2) the investigation is complex. For purposes of this section, "complex" shall mean there are a large number of unique transactions to be investigated or adjustments to be considered, the issues raised are novel, or the number of firms involved is large.

(e) Monitoring of agreements. No agreement under section 734 of the Act shall be accepted unless effective monitoring of the operation of the agreement is practicable. In accepting assurances and in monitoring compliance therewith; the
Secretary shall not be obliged to ascertain on a continuing basis the level of domestic prices of merchandise like that covered by the agreement. 

(f) Public interest. No agreement under section 734 of the Act shall be accepted unless the agreement is determined to be in the public interest. 

(g) Exports not to increase during interim period. No agreement to cease exports to the United States under section 734(b)(1) of the Act shall be accepted unless that agreement provides an adequate means of ensuring that the quantity of the merchandise covered by that agreement and exported to the United States during the period provided for cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representative period determined to be appropriate to the case. In ordinary circumstances, the representative period shall refer either to the preceding six month period in which the petition was filed or the comparable six month period of a year earlier, whichever more accurately reflects the historical level of importation absent import surges. If the level of exports to the United States exceeded the level of exports during the period determined most representative, then the agreement may be deemed violated and the provisions of § 353.43 will be applicable. 

(h) Procedures for suspension of investigations. Prior to accepting any agreement under section 734: 

(1) The petitioner shall be notified and consulted concerning the Secretary’s intention to suspend the investigation. A copy of the proposed agreement shall be furnished to the petitioner no less than 30 days prior thereto. 

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

(1) Issuance of an affirmative preliminary determination. Upon acceptance of an agreement to suspend an investigation, a “Notice of Suspension of Antidumping Investigation” shall be published in the Federal Register, including a summary of the principal provisions of the agreement on the basis of which the investigation was suspended. Unless an Affirmative Preliminary Determination has already been issued, an “Affirmative Preliminary Determination” shall be published together with the notice suspending the proceeding. 

(j) Suspension of liquidation. (1) Cessation of exports; complete elimination of dumping margin. If an agreement is accepted which provides for the cessation of exports or complete elimination of a dumping margin of merchandise exported to the United States, pursuant to section 734(b) of the Act, then, notwithstanding the issuance of an Affirmative Preliminary Determination, the liquidation of entries of merchandise covered by the agreement shall not be suspended. If liquidation has previously been suspended in the investigation, such suspension shall, without further comment or action, terminate on the date the notice is published and estimated antidumping duties shall be refunded, or appropriate bonds or other security shall be released. 

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

(k) Commission review. Where the Commission, having undertaken a review of an agreement to suspend an investigation other than one described in paragraph (j)(1) of this section, makes a negative determination, the Secretary shall resume his investigation on the date of publication of such determination as if the affirmative preliminary determination under § 353.39 had been made on that date. Where the Commission makes an affirmative determination in such a case, the Secretary shall continue the suspension of the investigation and terminate any suspension of liquidation which may then be in effect, and all estimated antidumping duties shall be refunded and all appropriate bonds or other security shall be released. 

(1) Continuation of investigation. By filing a request with both the Secretary and the Commission on the same date, exporters accounting for a significant proportion of exports to the United States of the merchandise which is the subject of the investigation, or the petitioner or any other domestic interested party (within the meaning of subparagraph (C), (D) or (E) of section 771(9) of the Act), which is a party to the proceeding, may, during the 20-day period following the date of publication of the notice of suspension, request a continuation of the investigation. Upon receiving such a request, the Secretary and Commission shall continue the investigation. If, as a result of such continued investigation, a Final Negative Determination is made or the Commission makes a negative injury determination, the investigation shall be terminated, without further comment or action, and notice thereof published in the Federal Register. If an Affirmative Final Determination is made and the Commission makes an affirmative injury determination, the suspension shall remain in effect in accordance with its terms. The provisions of paragraph (j) of this section regarding the suspension of liquidation of entries of merchandise covered by the agreement are unaffected by this subsection. 

§ 353.43 Violations of agreements. 

(a) In general. If it is determined that an agreement on the basis of which an investigation was suspended is being, or has been violated, or no longer meets the requirements of subsections (b) and (d) or (c) and (d) of section 734 of the Act: 

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

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

(3) If the investigation was completed, an Antidumping Duty Order shall be issued, effective with respect to entries of liquidation of which was suspended upon the determination that the agreement had been violated; and
(4) The petitioner, interested parties who are or were party to the proceeding, and the Commission shall be notified and notice of the determination shall be published in the Federal Register, including a summary of the reasons therefor.

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

(c) Intentional violations. The intentional violation of any agreement entered into under this section shall subject any person who is party to the agreement to the same penalties as for a fraudulent violation of section 592 of the Act (19 U.S.C. 1592). The procedural requirements of section 592 shall be applicable to any action to collect penalties.

§ 353.44 Final determinations.

(a) In general. Within 75 days after the date of a preliminary determination, a final determination shall be made whether merchandise which is the subject of the investigation is being, or is likely to be, sold in the United States at less than fair value.

(b) Extension period. The final determination may be postponed until not later than 135 days after the date of a preliminary determination where a written request for such a postponement is received, prior to the time the final determination otherwise would be due, from either exporters who account for a significant proportion of the merchandise which is the subject of the investigation (in proceedings in which the preliminary determination was affirmative) or the petitioner (in proceedings in which the preliminary determination was negative).

(c) Critical circumstances. If critical circumstances have been alleged and an affirmative final determination reached, then it shall include a finding of whether—

1. (i) There is a history of dumping in the United States or elsewhere of the circulating merchandise which is the subject of the investigation, or
2. (ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise at less than its fair value, and
3. (iii) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

(d) Disclosure of information. Promptly after making the preliminary determination, there shall be disclosed to each interested party then a party to the proceedings who requests such disclosure, all non-confidential information and, if made available under § 353.50, confidential information, on the basis of which the preliminary determination was made.

(e) Opportunity of parties to present views. Prior to the final determination, an opportunity shall be provided for all parties to be heard orally in person or by counsel before a designated official pursuant to § 353.47. Written views will be received from any person at any time, provided that, unless the Secretary or the officer presiding at the hearing otherwise provides for good cause, consideration of written views may be declined if received more than 10 days after the date the proceeding is held or after the transcript of any hearing is available to the public or less than 30 days before the final determination is due, whichever is earlier.

(f) Notice of determination. Notice of the final determination, the parties affected and the estimated margin of dumping, if any, shall be published in the Federal Register. Copies of the determination shall be mailed or otherwise delivered to all parties to the proceeding and the Commission.

(g) Contents of final determinations. The final determination shall include conclusions with regard to all facts and issues of law considered material to the determination. If the determination is affirmative, the amount of the dumping margin shall be estimated and stated.

(h) Effect of negative final determination. If the final determination is negative, the proceeding shall be terminated including any suspension of liquidation which may then be in effect, and all estimated antidumping duties shall be refunded and all appropriate bonds or other security shall be released.

§ 353.45 Exclusion of particular firms.

The Secretary may exclude one or more foreign manufacturers, producers or exporters from an affirmative preliminary, or an affirmative final, determination if he finds that all examined exports of the merchandise in question to the United States by the manufacturer, producer, or exporter in question during the period under consideration were made at prices not less than the fair value of the merchandise concerned. Usually, information on 100 percent of the imports in question will be required to be submitted to support a request for exclusion. In exceptional cases, the Secretary may determine that examination of a lesser percentage (never less than 75 percent) is adequate.

A manufacturer, producer, or exporter requesting exclusion, must submit all relevant sales information to permit consideration of the request and verification of the data on which the request is based, whether or not information concerning such sales has been requested by the Secretary. The Secretary also may exclude a foreign manufacturer, producer, or exporter, not excluded from an Affirmative Final Determination, from an Antidumping Duty Order, provided the information necessary to support such exclusion is received, verified, and analyzed by the Department in time to be considered by the Commission in making its final injury determination. The name of any such company which is determined to have satisfied the requirements for exclusion will be published in the Federal Register. Companies not excluded under this section will become subject to an Antidumping Duty Order, should one be issued, or an order thereafter petition for exclusion pursuant to the procedures of § 353.54 in order to be excluded from such Order.

§ 353.46 Submission of information and written views.

(a) Submission of information and written views. Except in situations where it would be manifestly unjust, any information or written views submitted in connection with a proceeding shall be considered only if received within the time established by these regulations or by specific instructions applicable to any request for information; and information or written views received after such time shall not be considered in the proceeding. Any written views intended to be considered in connection with a proceeding shall be submitted on letter-size paper, double spaced, in at least 10 copies, to the Secretary, Attention: Assistant Secretary for Trade Administration, Room 3526, Department of Commerce, Washington, D.C. 20230. Except when the Secretary determines it will be unduly burdensome to the party...
to the proceeding, in which case the Secretary shall effect the service, a copy shall be served at the same time, by mail or personal service, on counsel for each party to the proceeding as of the date of such filing, or if not represented by counsel, then the person designated for such purpose by the party. A certificate of such service shall accompany any such filing.  

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

§ 353.47 Hearings.  

During the course of an investigation, normally within 30 days after the Preliminary Determination is published, a hearing shall be held, upon the request of any party to the proceeding, to provide interested persons an opportunity to present views orally. Such hearing shall be conducted before a designated official. A verbatim record shall be transcribed and copies of the transcript made available to the public. The hearing shall not be subject to the Administrative Procedure Act, and shall not involve the examination or cross examination of witnesses under oath. At the discretion of the officer conducting the hearing, persons not party to the proceeding, including officials of other agencies or departments of the United States Government, may present views. If not included in the notice of the preliminary determination, notice of such a hearing shall be published in the Federal Register. All requests for hearings shall be accompanied by a statement outlining the issues which the person desires to discuss. Reasonable notice of the hearing will be given to all parties to the proceeding. One week prior to such a hearing, pre-hearing briefs shall be submitted to the Secretary and exchanged among parties to the proceeding. Persons will be restricted, in their oral presentations, to issues raised in this pre-hearing brief. Any person not submitting such a brief ordinarily will be restricted to rebuttal of points made by other persons. Ordinarily, the presiding officer at a hearing will provide an opportunity for the submission of post-hearing briefs, within the time limits prescribed at the hearing. The Secretary may at any time invite any person to supply him with information or argument.  

§ 353.48 Antidumping duty order.  

(a) In general. Within seven days of notification that the Commission has made an affirmative determination on the issue of material injury, an Antidumping Duty Order shall be published that:  

(1) Directs customs officers to assess an antidumping duty on the merchandise found to be sold at less than fair value, equal to the amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise, such assessment to be made within 6 months after the date on which the Secretary has received satisfactory information upon which such assessment may be based, but in no event later than 12 months after the end of the importer's annual accounting period within which the merchandise is entered, or withdrawn from warehouse, for consumption, or in the case of merchandise not sold prior to its importation, 12 months after the end of the annual accounting period of the manufacturer or exporter within which it is sold in the United States to a person who is not the exporter of that merchandise:  

(2) Includes a description of the class or kind of merchandise to which it applies, in such detail as is deemed necessary; and  

(3) Pending liquidation of entries of the merchandise, requires the deposit of estimated antidumping duties at the same time as estimated normal customs duties on that merchandise are deposited.  

(b) Calculation of the amount of the estimated duty to be deposited. The deposit of estimated antidumping duties for each manufacturer, producer or exporter shall be equal to the amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise, as determined in the affirmative final determination of the Secretary, plus the amount of the normal customs duties, plus the amount of the anti-dumping duties and anti-subsidy duties, if any, determined in the affirmative final determination by the Commission.  

§ 353.49 Security in lieu of estimated duty pending early determination of duty.  

(a) Conditions for use. The Secretary may allow, for no more than 90 days after the date of publication of an Antidumping Duty Order under § 353.48, the posting of a bond or other security in lieu of the deposit of estimated antidumping duties required under § 353.48(c) if, on the basis of information presented to it by any manufacturer, producer, or exporter within seven days after publication of the Antidumping Duty Order, the Secretary is satisfied that within 90 days after the date of publication of an Order under § 353.48, a determination will be made concerning the foreign market value and the United States price for all merchandise of such manufacturer, producer, or exporter described in that Order which was entered, or withdrawn from warehouse, for consumption on or after the date of publication of—  

(1) An affirmative preliminary determination as to sales at less than fair value; or  

(2) If the determination under paragraph (a)(1) of this section was negative, an affirmative final determination as to sales at less than fair value; and before the date of publication of the affirmative final determination by the Commission.  

(b) Notice and hearing. The Secretary shall publish notice of any determination to allow the posting of security in lieu of the deposit of estimated antidumping duties, and shall, upon the request of any party to the proceeding, hold a hearing before determining the United States price and foreign market value of the merchandise of the foreign manufacturer, producer or exporter.  

(c) Determination used as basis of duty. The Secretary shall publish notice of the results of the determination of United States price and foreign market value, and that determination shall be the basis for the assessment of antidumping duties on entries of merchandise to which the notice under this section applies and shall also be the basis for the deposit of estimated antidumping duties on future entries of merchandise of manufacturers, producers or exporters described in paragraph (a) of this section to which the Order issued under § 353.48 applies.  

§ 353.50 Differences in determined and estimated antidumping duties.  

If the amount of the estimated antidumping duties deposited pursuant to the Preliminary Affirmative Determination is different from the amount of the antidumping duty to be assessed pursuant to an Antidumping Duty Order, the difference with respect to merchandise entered, or withdrawn from warehouse, for consumption before publication of notice of the Commission's affirmative Final Determination shall be:  

(a) Disregarded, to the extent that the estimated duty is less than the duty determined to be assessable under the Order, or  

(b) Refunded, to the extent that the estimated duty is greater than the duty determined to be assessable under the Order.  

§ 353.51 Verification of information. Use of best information available.  

(a) Information upon which a final determination is based shall be verified.
The methods and procedures used to verify information in a particular case shall be published in the Federal Register in the “Notice of Affirmative Final Antidumping Determination” or “Notice of Negative Final Antidumping Determination,” as appropriate.

(b) Whenever information cannot be satisfactorily verified, or is not submitted in a timely fashion or in the form required, the submitter of the information will be notified and the affected determination will be made on the basis of the best information then otherwise available which may include the information submitted in support of the petition. An opportunity to correct inadequate submissions will be provided if the corrected submission is received in time to permit proper analysis and verification of the information concerned; otherwise no correction will be taken into account. Where a party to the proceeding refuses to provide requested information, that fact may be taken into account in determining what is the best available information.

(c) In verifying information under this section, access to files, records and personnel may be requested by appropriate officers of the Secretary as part of the verification process. Failure to permit such access may prevent satisfactory verification and require the application of paragraph (b) of this section.

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

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

§ 353.53 Administrative review of determinations.

(a) In general. At least once during each 12-month period beginning on the anniversary of the date an Antidumping Duty Order or notice of suspension of an investigation is published, the Secretary shall determine:

(1) The foreign market value and United States price of each entry of merchandise subject to the Antidumping Duty Order and included within that determination, and the amount, if any, by which the foreign market value of each such entry exceeds the United States price of the entry; or

(2) The status of, and compliance with, any agreement by reason of which an investigation was suspended.

(b) Changed circumstances. (1) Whenever the Secretary receives information or a request for the review of, an Antidumping Duty Order or Finding or an agreement on the basis of which an investigation was suspended, which shows changed circumstances sufficient to warrant review of such Order, Finding or agreement, he may conduct such review, publish a “Notice of Intention to Review Antidumping Duty Order” or “Notice of Intention to Review Suspension Agreement” in the Federal Register. Such Notice shall indicate the merchandise concerned, and any changed circumstances or other significant issues then known which will be considered during the review.

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

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

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

(e) Investigations which were discontinued prior to January 1, 1980. With respect to each investigation which was concluded with a discontinuance prior to January 1, 1980, the discontinuance will be reviewed according to the procedures of section 751 of the Act and continued, modified, or terminated, as appropriate. Until modified or terminated each discontinuance will remain in effect.

§ 353.54 Revocation of antidumping duty orders and termination of suspended investigations.

(a) In general. Whenever the Secretary determines that sales of merchandise subject to an Antidumping Finding or Order or a suspended investigation are no longer being made at less than fair value within the meaning of section 731 of the Act and is satisfied that there is no likelihood of resumption of sales at less than a fair value, he may act to revoke or terminate, in whole or in part, such Order or Finding or suspended investigation. Ordinarily, consideration of such revocation or termination will be made only subsequent to a review as described in § 353.53 of this part.

(b) Application to revoke or terminate. An application for the revocation of any Finding or Order or the termination of a suspended investigation, premised upon the absence of sales at less than fair value, may be submitted in writing by a party to the proceeding to the Secretary together with detailed information demonstrating that the imported merchandise is no longer being sold at less than fair value. Ordinarily, such an application will be considered only if there have been no sales at less than fair value for at least a two-year period following the date of publication in the Federal Register of an Antidumping Duty Finding or Order or notice of suspension of investigation; provided, however, that where a firm can demonstrate that it has not sold the merchandise at less than fair value during the period of or immediately prior to the investigation (but the firm did not file a timely application for exclusion under § 353.45), the two-year period shall begin on the date of the
preliminary determination regardless of whether that determination was affirmative or negative.

(c) Revocation or termination by the Secretary. The Secretary may on his own initiative revoke a Finding or Order or terminate a suspended investigation after three years if he is satisfied that (1) there is no likelihood of resumption of imports of the merchandise to the United States the sale of which has been made at less than fair value, or (2) the sales at less than fair value have been eliminated, or (3) other changed circumstances warrant a revocation of the Finding or Order or the termination of a suspended investigation.

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

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

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

§ 353.55 Reimbursement of antidumping duties.

(a) General. In calculating the United States price there shall be deducted the amount of any antidumping duties which are, or will be, paid by the manufacturer, producer, seller, or exporter, or which are, or will be, refunded to the importer by the manufacturer, producer, seller, or exporter, either directly or indirectly, but a warranty of nonapplicability of antidumping duties entered, or withdrawn from warehouse, for consumption on or after the date of publication of the "Notice of Tentative Determination to Revive or Terminate," will be ordered suspended pending the final determination on revocation or termination.

§ 353.56 Conversion of currencies.

(a) Rule for conversion. In determining whether or not and amount of any difference between the United States price and the fair value or foreign market value for the purposes of this part or of the Act, any necessary conversion of a foreign currency into its equivalent in United States currency shall be made in accordance with the provisions of section 222 of the Tariff Act of 1930, as amended (31 U.S.C. 372).

(1) As of the date of purchase or agreement to purchase, if the purchase price is an element of the comparison;

(2) As of the date of exportation, if the exporter's sales price is an element of the comparison.

(b) Special rules for fair value investigations. For purposes of fair value investigations, manufacturers, exporters, and importers concerned will be expected to act within a reasonable period of time to take into account price differentials resulting from changes in prevailing exchange rates. Where prices under consideration are affected by temporary exchange rate fluctuations, no differences between the prices being compared resulting solely from such exchange rate fluctuations will be taken into account in fair value investigations.

§ 353.57 Entered value not controlling.

The fact that the importer has indicated, on entry, the difference between the United States price and the foreign market value and the district director of Customs has approved the resulting entered value shall not prevent the assessment of the antidumping duty.
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<td>Steel bars, reinforcing bars, and shapes manufactured by the Broken Hill Proprietary Co., Ltd., Melbourne, Australia</td>
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<td>Tuners (of the type used in consumer electronic products), except (i) those produced and sold by Matsushita Electric Industrial Co., Ltd., (ii) those produced and sold by Victor, Co. of Japan, Ltd., (iii) those produced and sold by Tokyo Shibaura Electric Co., Ltd., (iv) those produced and sold by Sony Electric Co., Ltd., and (v) those sold by Sony Corp. of America, Inc., and (vi) those sold by Sony Corporation of Canada</td>
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<td>Large power transformers, except those produced and sold by Asnes Amann San Giorgio, Companhia minera Brasiliana S.A. and Sociedade Nacional de Minas de São Geraldo do Sul, Brazil</td>
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Annex I—Antidumping Duty Findings and Orders Currently in Effect—Continued

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<th>Merchandise</th>
<th>Country</th>
<th>T.D.</th>
<th>Modified by</th>
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<td>Impression fabric of manmade fiber, finished, whether slit or uncut, and not inked, except that produced and sold by Asahi Chemical Industry Co., Ltd., and the Shirasaki Tape Co., Ltd., Japan.</td>
<td>Japan</td>
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<td>Carbon steel plate</td>
<td>do</td>
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<td>Polyvinyl chloride sheet and film, other than that produced by Ocean Plastics Co., Ltd., and China Gulf Plastics Corp.</td>
<td>Taiwan</td>
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<td>Viscose rayon staple fiber</td>
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<td>Steel wire strand, other than that produced by Kawasaki Wire Products Co., Ltd.</td>
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FR Doc. 80-3650 Filed 2-5-80; 8:45 am|
BILLING CODE 3510-25-M