Legislation of the United States\(^1\)

Modifications to U.S. Countervailing and Antidumping Duties Law Effected by the Trade and Tariff Act of 1984

As members of the Committee are aware, the United States Trade and Tariff Act of 1984 was signed into law on October 30, 1984. This Act, in its entirety, has been notified to the GATT by the United States under paragraph 3 of the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance.

As Title VI of the Trade and Tariff Act of 1984 contains a number of amendments to Title VII of the Tariff Act of 1930 (which are specific to the operation of U.S. countervailing and antidumping duties law), the United States Delegation has prepared a consolidated version of Title VII of the Tariff Act of 1930 for the purpose of the present notification.

In this notification, the new provisions of the law are underscored. Language in the law which was deleted by the Trade and Tariff Act amendments has not been included. Those sections in the 1984 Act which added underscored language are identified in brackets in the right-hand margin.

Because the text contained in the following notification was prepared expressly for the purpose of facilitating the Committee's review, and therefore does not represent an official consolidation of Title VII, there may be errors of a minor nature. If we are able to identify any such errors, they will be drawn to the Committee's attention as soon as possible.

\(^1\) English only
TITLE VII—COUNTERVAILING AND ANTIDUMPING DUTIES

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Subtitle A—Imposition of Countervailing Duties

Sec. 701. COUNTERVAILING DUTIES IMPOSED.

(a) General Rule.—If—

(1) the administering authority determines that—
   (A) a country under the Agreement, or
   (B) a person who is a citizen or national of
       such a country, or a corporation, association, or
       other organization organized in such a country,
       is providing, directly or indirectly, a subsidy with
       respect to the manufacture, production, or exportation
       of a class or kind of merchandise imported, or sold (or 
       likely to be sold) for importation, into the United States,
       and

   (2) the Commission determines that—
       (A) an industry in the United States--
           (i) is materially injured, or
           (ii) is threatened with material injury,
       or
       (B) the establishment of an industry in the
           United States is materially retarded,

then there shall be imposed upon such merchandise a counter-

vailing duty, in addition to any other duty imposed, equal to

the amount of the net subsidy. For purposes of this subsec-

tion and section 705(b)(1), a reference to the sale of mer-

chandise includes the entering into of any leasing arrange-

ment regarding the merchandise that is equivalent to the

sale of the merchandise.

(b) Country Under the Agreement.—For purposes of this

subtitle, the term "country under the Agreement" means a

country--

(1) between the United States and which the

Agreement on Subsidies and Countervailing Measures

applies, as determined under section 2(b) of the Trade

Agreements Act of 1979,

(2) which has assumed obligations with respect to

the United States which are substantially equivalent to

obligations under the Agreement, as determined by the

President, or

(3) with respect to which the President determines

that--

   (A) there is an agreement in effect between

       the United States and that country which--

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

       (ii) requires unconditional most-favored-

       nation treatment with respect to articles

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

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

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

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

(c) Cross Reference.—For provisions of law applicable in the case of merchandise which is the product of a country other than a country under the Agreement, see section 303 of this Act.

(g) Whenever the administering authority has reasonable grounds to believe or suspect that an upstream subsidy, as defined in section 771A(a)(1), is being paid or bestowed, the administering authority shall investigate whether an upstream subsidy has in fact been paid or bestowed, and if so, shall include the amount of the upstream subsidy as provided in section 771A(a)(3).

[[§613(b)]]

Sec. 702. Procedures for Initiating a Countervailing Duty Investigation.

(a) Initiation by Administering Authority.—A countervailing duty investigation shall be commenced whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 701(a) exist.

(b) Initiation by Petition.—

(1) Petition requirements.—A countervailing duty proceeding shall be commenced whenever an interested party described in subparagraph (C), (D), or (E) of section 771(9) files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 701(a), and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) Simultaneous filing with Commission.—The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(3) Petition Based Upon a Derogation of an International Undertaking on Official Export Credits.—If the sole basis of a petition filed under subsection 702(b)(1) is the derogation of an international
undertaking on official export credits, the Administering Authority shall immediately notify the Secretary of the Treasury who shall, in consultation with the Administering Authority, within twenty days determine the existence and estimated value of the derogation, if any, and shall publish such determination in the Federal Register.

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

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

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

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

(d) Notification to Commission of Determination.—The administering authority shall—

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

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

Sec. 703. PRELIMINARY DETERMINATIONS.

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

(1) an industry in the United States—
(A) is materially injured, or  
(B) is threatened with material injury, or  
(2) the establishment of an industry in the United States is materially retarded,  
by reason of imports of the merchandise which is the subject of the investigation by the administering authority. If that determination is negative, the investigation shall be terminated.

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

(2) Notwithstanding subsection (b)(1), when the petition is one subject to subsection 702(b)(3), the Administering Authority shall, taking into account the nature of the subsidy concerned, make the determination required by subsection 703(b)(1) on an expeditious basis and within 85 days after the date on which the petition is filed under section 702(b) unless the provisions of section 703(c) apply.  

(3) Preliminary determination under waiver of verification.—Within 55 days after the initiation of an investigation the administering authority shall cause an official designated for such purpose to review the information concerning the case received during the first 50 days of the investigation, and, if there appears to be sufficient information available upon which the determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available nonconfidential information and all other information which is disclosed pursuant to section 777. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure, the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), or (F) of section 771(9) to whom such disclosure was made may furnish to the administering authority an irrevocable written waiver of verification of the information received by the authority, and an agreement that it is willing to have a determination made on the basis of
the record then available to the authority. If a timely waiver and agreement have been received from the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), or (F) of section 771(9) to whom the disclosure was made, and the authority finds that sufficient information is then available upon which the preliminary determination can reasonably be based, a preliminary determination shall be made on an expedited basis on the basis of the record established during the first 50 days after the investigation was initiated.

(c) Extension of Period in Extraordinarily Complicated Cases.—

(1) In general.—If—

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

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

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

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

(II) the novelty of the issues presented;

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

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

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

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

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

(d) Effect of Determination by the Administering Authority.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority—
(1) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register,

(2) shall order the posting of a cash deposit, bond, or other security, as it deems appropriate, for each entry of the merchandise concerned equal to the estimated amount of the net subsidy, and

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

(e) Critical Circumstances Determinations.—

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

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

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

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

(f) Notice of Determinations.—Whenever the Commission or the administering authority makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register. [§613(c)]

(h) Time Period Where Upstream Subsidization Involved.

(1) In general.—Whenever the administering authority concludes prior to a preliminary determina—
tion under section 703(b), that there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed, the time period within which a preliminary determination must be made shall be extended to 250 days after the filing of a petition under section 702(b) or commencement of an investigation under section 702(a) (310 days in cases declared extraordinarily complicated under section 703(c)), if the administering authority concludes that such additional time is necessary to make the required determination concerning upstream subsidization.

(2) Exceptions.—Whenever the administering authority concludes, after a preliminary determination under section 703(b), that there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed—

(A) in cases in which the preliminary determination was negative, the time period within which a final determination must be made shall be extended to 165 days under section 705(a)(1) or 225 days under section 705(a)(2), as appropriate; or

(B) in cases in which the preliminary determination is affirmative, the determination concerning upstream subsidization—

(i) need not be made until the conclusion of the first annual review under section 751 of any eventual Countervailing Duty Order, or, at the option of the petitioner, or

(ii) will be made in the investigation and the time period within which a final determination must be made shall be extended to 165 days under section 705(a)(2), as appropriate, except that the suspension of liquidation ordered in the preliminary determination shall terminate at the end of 120 days from the date of publication of that determination and not be resumed unless and until the publication of a Countervailing Duty Order under section 706(a).

There may be an extension of time for the making of a final determination under this subsection only if the administering authority determines that such additional time is necessary to make the required determination concerning upstream subsidization.

SEC. 704. TERMINATION OR SUSPENSION OF INVESTIGATION. [§604(a)(1)]

(a) Termination of Investigation Upon Withdrawal of Petition.—
In general.—Except as provided in paragraphs (2) and (3), an investigation under this subtitle may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or by the administering authority if the investigation was initiated under section 702(a).

(2) Special rules for quantitative restriction agreements.—

(A) In general.—Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting, with the government of the country in which the subsidy practice is alleged to occur, an understanding or other kind of agreement to limit the volume of imports into the United States of the merchandise that is subject to the investigation unless the administering authority is satisfied that termination on the basis on that agreement is in the public interest.

(B) Public interest factors.—In making a decision under subparagraph (A) regarding the public interest, the administering authority shall take into account—

(i) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on United States consumers than the imposition of countervailing duties;

(ii) the relative impact on the international economic interests of the United States; and

(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

(C) Prior consultations.—Before making a decision under subparagraph (A) regarding the public interest, the administering authority shall, to the extent practicable, consult with—

(i) potentially affected consuming industries; and

(ii) potentially affected producers and workers in the domestic industry producing the like merchandise, including producers and workers not party to the investigation.

(3) Limitation on termination by Commission.—The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 703(b).
(b) Agreements To Eliminate or Offset Completely a Subsidy or To Cease Exports of Subsidized Merchandise.—The administering authority may suspend an investigation if the government of the country in which the subsidy practice is alleged to occur agrees, or exporters who account for substantially all of the imports of the merchandise which is the subject of the investigation agree—

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

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

(c) Agreements Eliminating Injurious Effect.—

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

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

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

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

(3) Quantitative restriction agreements.—The administering authority may accept an agreement with a foreign government under this subsection to restrict the volume of imports of merchandise which is the subject of an investigation into the United States, but it may not accept such an agreement with exporters.

(4) Definition of extraordinary circumstances.—

(A) Extraordinary circumstances.—For purposes of this subsection, the term "extraordinary circumstances" means circumstances in which—

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

(ii) the investigation is complex.

(B) Complex.—For purposes of this paragraph, the term "complex" means—
(i) there are a large number of alleged subsidy practices and the practices are complicated,
(ii) the issues raised are novel, or
(iii) the number of exporters involved is large.

(d) Additional Rules and Conditions.—
(1) Public interest; monitoring.—The administering authority shall not accept an agreement under subsection (b) or (c) unless—
(A) it is satisfied that suspension of the investigation is in the public interest, and
(B) effective monitoring of the agreement by the United States is practicable.  

In applying subparagraph (A) with respect to any quantitative restriction agreement under subsection (c), the administering authority shall take into account, in addition to such other factors as are considered necessary or appropriate, the factors set forth in subsection (a) (2) (B) (i), (ii), and (iii) as they apply to the proposed suspension and agreement, after consulting with the appropriate consuming industries, producers, and workers referred to in subsection (a) (2) (C) (i) and (ii).  

(2) Regulations governing entry or withdrawals.—In order to carry out an agreement concluded under subsection (b) or (c), the administering authority is authorized to prescribe regulations governing the entry, or withdrawal from warehouse, for consumption of merchandise covered by such agreement.

(e) Suspension of Investigation Procedure.—Before an investigation may be suspended under subsection (b) or (c) the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation,

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced (including any action required of foreign governments), and of how the agreement will meet the requirements of subsections (b) and (d) or (c) and (d), and

(3) permit all interested parties described in section 771(9) to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A).

(f) Effects of Suspension of Investigation.—
(1) In general.—If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c), then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 703(b) with respect to the merchandise which is the subject of the investigation, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) Liquidation of entries.—

(A) Cessation of exports; complete elimination of net subsidy.—If the agreement accepted by the administering authority is an agreement described in subsection (b), then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of merchandise which is the subject of the investigation shall not be suspended under section 703(d)(1),

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 703(d)(1).

(B) Other agreements.—If the agreement accepted by the administering authority is an agreement described in subsection (c), then the liquidation of entries of the merchandise which is the subject of the investigation shall be suspended under section 703(d)(1), or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3), but the security required under section 703(d)(2) may be adjusted to reflect the effect of the agreement.

(3) Where investigation is continued.—If, pursuant to subsection (g), the administering authority and
the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c), then--

(A) if the final determination by the administering authority or the Commission under section 705 is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue a countervailing duty order in the case so long as--

(i) the agreement remains in force,
(ii) the agreement continues to meet the requirements of subsections (b) and (d) or (c) and (d), and
(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(g) Investigation To Be Continued Upon Request.--If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from--

(1) the government of the country in which the subsidy practice is alleged to occur, or [§612(b)(2)]

(2) an interested party described in subparagraph (C), (D), (E), and (F) of section 771(9) which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) Review of Suspension.--

(1) In general.--Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in subparagraph (C), (D), (E), and (F) of section 771(9) may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) Commission investigation.--Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the merchandise which is the subject of the investigation is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 703(b) had been made on that date.
(3) Suspension of liquidation to continue during review period.—The suspension of liquidation of entries of the merchandise which is the subject of the investiga-
tion shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of the affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall--

(A) terminate the suspension of liquidation under section 703(d)(1), and
(B) release any bond or other security, and refund any cash deposit, required under section 703(d)(2).

(i) Violation of Agreement.—

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

(A) suspend liquidation under section 703(d)(1) of unliquidated entries of the merchan-
dise made on or after the later of--

(i) the date which is 90 days before the date of publication of the notice of suspen-
son of liquidation, or
(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d) or (c) and (d), was first entered, or withdrawn from warehouse, for consumption,
(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination under section 703(b) were made on the date of its determination under this paragraph,
(C) if the investigation was completed under subsection (g), issue a countervailing duty order under section 706(a) effective with respect to entries of merchandise the liquidation of which was suspended,
(D) if it considers the violation to be international, notify the Commissioner of Customs who shall take appropriate action under paragraph

§604(a)(4)(C)
(2), and (E) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) Intentional violation to be punished by civil penalty.—Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedure, as the penalty imposed for a fraudulent violation of section 592(a) of this Act.

(j) Determination Not to Take Agreement Into Account.—In making a final determination under section 705, or in conducting a review under section 751, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1), or continued an investigation under subsection (g), the Commission and the administering authority shall consider all of the merchandise which is the subject of the investigation, without regard to the effect of any agreement under subsection (b) or (c).

(k) Termination of Investigations Initiated by Administering Authority.—The administering authority may terminate any investigation initiated by the administering authority under section 702(a) after providing notice of such termination to all parties to the investigation.

SEC. 705. FINAL DETERMINATIONS.

(a) Final Determinations by Administering Authority.—

(1) In general.—Within 75 days after the date of the preliminary determination under section 703(b), the administering authority shall make a final determination of whether or not a subsidy is being provided with respect to the merchandise; except that when an investigation under this subtitle is initiated simultaneously with an investigation under subtitle B, which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination under this paragraph to the date of the final determination of the administering authority in such investigation initiated under subtitle B.

(2) Critical circumstances determinations.—If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 703(e), shall also contain a finding as to whether—

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

(B) there have been massive imports of the class or kind of merchandise involved over a
relatively short period.

Such findings may be affirmative even though the pre-
liminary determination under section 703(e)(1) was
negative.

(b) Final Determinations by Commission.--

(1) In general.--The Commission shall make a final
determination of whether--

(A) an industry in the United States--
   (i) is materially injured, or
   (ii) is threatened with material injury,
   or
(B) the establishment of an industry in the
United States is materially retarded,
by reason of imports, or sales (or the likelihood of
sales) for importation, of the merchandise with respect
to which the administering authority has made an
affirmative determination under subsection (a).

(2) Period for injury determination following
affirmative preliminary determination by administering
authority.--If the preliminary determination by the
administering authority under section 703(b) is affirma-
tive, then the Commission shall make the determination
required by paragraph (1) before the later of--

(A) the 120th day after the day on which the
    administering authority makes its affirmative
    preliminary determination under section 703(b), or
(B) the 45th day after the day on which the
    administering authority makes its affirmative final
determination under subsection (a).

(3) Period for injury determination following
negative preliminary determination by administering
authority.--If the preliminary determination by the
administering authority under section 703(b) is nega-
tive, and its final determination under subsection (a)
is affirmative, then the final determination by the
Commission under this subsection shall be made within 75
days after the date of that affirmative final
determination.

(4) Certain additional findings.--

(A) If the finding of the administering
authority under subsection (a)(2) 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.

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

(c) Effect of Final Determinations.—

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

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

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

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

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

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

(3) Effect of negative determinations under subsections (a)(2) and (b)(4)(A).—If the determination of the administering authority or the Commission under subsection (a)(2) and (b)(4)(A), respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under paragraph (4) or section 703(e)(2), and

(B) release any bond or other security, and refund any cash deposit required, under section 703(d)(2) with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 703(e)(2).
(4) Effect of affirmative determination under subsection (a)(2).—If the determination of the administering authority under subsection (a)(2) is affirmative, then the administering authority shall—

(A) in cases where the preliminary determinations by the administering authority under sections 703(b) and 703(e)(1) were both affirmative, continue the retroactive suspension of liquidation and the posting of a cash deposit, bond, or other security previously ordered under section 703(e)(2);

(B) in cases where the preliminary determination by the administering authority under section 703(b) was affirmative, but the preliminary determination under section 703(e)(1) was negative, shall modify any suspension of liquidation and security requirement previously ordered under section 703(d) to apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered; or

(C) in cases where the preliminary determination by the administering authority under section 703(b) was negative, shall apply any suspension of liquidation and security requirement ordered under subsection 705(c)(1)(B) to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation is first ordered.

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

SEC. 706. ASSESSMENT OF DUTY.

(a) Publication of Countervailing Duty Order.—Within 7 days after being notified by the Commission of an affirmative determination under section 705(b), the administering authority shall publish a countervailing duty order which—

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

(2) shall presumptively apply to all merchandise of such class or kind exported from the country investigated, except that if—

(A) the administering authority determines there is a significant differential between companies receiving subsidy benefits, or

(B) a State-owned enterprise is involved,

the order may provide for differing countervailing duties.

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

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

(b) Imposition of Duties.—

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

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

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

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

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

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

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

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

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

SEC. 708.

Nothing in this title shall be interpreted as superseding the provisions of section 1912 of the Export-Import Bank Act Amendments of 1978, except that in the even of an assessment of duty based on a derogation under section 706 or action under section 703(d)(2), the Secretary of the Treasury shall not authorize the Bank to provide guarantees, insurance and credits to competing United States sellers pursuant to section 1912 of such Act.

SEC. 709. CONDITIONAL PAYMENT OF COUNTERVAILING DUTY.

(a) In General.—For all entries, or withdrawals from warehouse, for consumption of merchandise subject to a countervailing duty order on or after the date of publication of such order, no customs officer may deliver merchandise of that class or kind to the person by whom or for whose account it was imported unless that person complies with the requirement of subsection (b) and deposits with the appropriate customs officer an estimated countervailing duty in an amount determined by the administering authority.

(b) Importer Requirements.—In order to meet the requirements of this subsection, a person shall—
(1) furnish, or arrange to have furnished, to the appropriate customs officer such information as the administering authority deems necessary for ascertaining any countervailing duty to be imposed under this subtitle,

(2) maintain and furnish to the customs officer such records concerning such merchandise as the administering authority, by regulation, requires, and

(3) pay, or agree to pay on demand, to the customs officer the amount of countervailing duty imposed under this subtitle on that merchandise.
Subtitle B—Imposition of Antidumping Duties

SEC. 731. ANTIDUMPING DUTIES IMPOSED.

If—

(1) the administering authority determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury,

or

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

then there shall be imposed upon such merchandise an antidumping duty, in addition to any other duty imposed, in an amount equal to the amount by which the foreign market value exceeds the United States price for the merchandise.

For purposes of this section and section 735(b)(1), a reference to the sale of foreign merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

SEC. 732. PROCEDURES FOR INITIATING AN ANTIDUMPING DUTY INVESTIGATION.

(a) Initiation by Administering Authority.--

(1) In general.--An antidumping duty investigation shall be commenced whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 731 exist.

(2) Cases involving persistent dumping.--

(A) Monitoring.--The administering authority may establish a monitoring program with respect to imports of a class or kind of merchandise from any additional supplier country for a period not to exceed one year if—

(i) more than one antidumping order is in effect with respect to that class or kind of merchandise;

(ii) in the judgment of the administering authority there is reason to believe or suspect an extraordinary pattern of persistent injurious dumping from one or more additional supplier countries; and
(iii) in the judgment of the administering authority this extraordinary pattern is causing a serious commercial problem for the domestic industry.

(B) If during the period of monitoring referred to in subparagraph (A), the administering authority determines that there is sufficient information to commence a formal investigation under this subsection regarding an additional supplier country, the administering authority shall immediately commence such an investigation.

(C) Definition.—For purposes of this paragraph, the term "additional supplier country" means a country regarding which no antidumping investigation is currently pending, and no antidumping duty order is currently in effect, with respect to imports of the class or kind of merchandise covered by subparagraph (B).

(D) Expeditious action.—The administering authority and the Commission, to the extent practicable, shall expedite proceedings under this subtitle undertaken as a result of a formal investigation commenced under subparagraph (b).

(b) Initiation by Petition.—

(1) Petition requirements.—An antidumping duty proceeding shall be commenced whenever an interested party described in subparagraph (C), (D), or (E) of section 771(9) files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 731, and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) Simultaneous filing with Commission.—The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

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

(1) determine whether the petition alleges the elements necessary for the imposition of a duty under section 731 and contains information reasonably available to the petitioner supporting the allegations,

(2) if the determination is affirmative, commence an investigation to determine whether the class or kind of merchandise described in the petition is being, or is likely to be, sold in the United States at less than its fair value, and provide for the publication of notice of the determination to commence an investigation in the Federal Register, and
(3) if the determination is negative, dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and provide for the publication of notice of the determination in the Federal Register.

(d) Notification to Commission of Determination.—The administering authority shall—

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

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

Sec. 733. PRELIMINARY DETERMINATIONS.

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

(1) an industry in the United States—
   (A) is materially injured, or
   (B) is threatened with material injury, or

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

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

(b) Preliminary Determination by Administering Authority.—

(1) Period of antidumping duty investigation.—Within 160 days after the date on which a petition is filed under section 732(b), or an investigation is commenced under section 732(a), but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold at less than fair value. If the
determination of the administering authority under this subsection is affirmative, the determination shall include the estimated average amount by which the foreign market value exceeds the United States price.

(2) Preliminary determination under waiver of verification.—Within 75 days after the initiation of an investigation, the administering authority shall cause an official designated for such purpose to review the information concerning the case received during the first 60 days of the investigation, and, if there appears to be sufficient information available upon which the preliminary determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available non-confidential information and all other information which is disclosed pursuant to section 777. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure, the petitioner and each party which is an interested party described in subparagraph (C), (D), or (E) of section 771(9) to whom such disclosure was made may furnish to the administering authority an irrevocable written waiver of verification of the information received by the authority, and an agreement that it is willing to have a preliminary determination made on the basis of the record then available to the authority. If a timely waiver and agreement have been received from the petitioner and each party which is an interested party described in subparagraph (C), (D), or (E) of section 771(9) to whom the disclosure was made, and the authority finds that sufficient information is then available upon which the preliminary determination can reasonably be based, a preliminary determination shall be made within 90 days after the commencement of the investigation on the basis of the record established during the first 60 days after the investigation was commenced.

(c) Extension of Period in Extraordinarily Complicated Cases.--

(1) In general.—If—

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b)(1), or

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

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

(II) the number and complexity of the transactions to be investigated or adjustments to be considered,

(ii) the novelty of the issues presented,
the number of firms whose activities must be investigated, and
(ii) additional time is necessary to make the preliminary determination,
then the administering authority may postpone making the preliminary determination under subsection (b)(1) until not later than the 210th day after the date on which a petition is filed under section 732(b), or an investigation is commenced under section 732(a).

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

(d) Effect of Determination by the Administering Authority.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority—

(1) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register,

(2) shall order the posting of a cash deposit, bond, or other security, as it deems appropriate, for each entry of the merchandise concerned equal to the estimated amount by which the foreign market value exceeds the United States price, and

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

(e) Critical Circumstances Determinations.—

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

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of
the 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 which is the subject of the investigation at less than its fair value, and

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

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

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

SEC. 734. TERMINATION OR SUSPENSION OF INVESTIGATION.

(a) Termination of Investigation Upon Withdrawal of Petition.—

(1) In general.—Except as provided in paragraphs (2) and (3), an investigation under this subtitle may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or by the administering authority if the investigation was initiated under section 732(a).

(2) Special rules for quantitative restriction agreements.—

(A) In general.—Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting an understanding or other kind of agreement to limit the volume of imports into the United States of the merchandise that is subject to the investigation unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

(B) Public interest factors.—In making a decision under subparagraph (A) regarding the
public interest the administering authority shall take into account—

(i) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on United States consumers than the imposition of antidumping duties;

(ii) the relative impact on the international economic interests of the United States; and

(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

(C) Prior consultations.—Before making a decision under subparagraph (A) regarding the public interest, the administering authority shall, to the extent practicable, consult with—

(i) potentially affected consuming industries; and

(ii) potentially affected producers and workers in the domestic industry producing the like merchandise, including producers and workers not party to the investigation.

(3) Limitation on termination by Commission.—The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 733(b).

(b) Agreements To Eliminate Completely Sales at Less Than Fair Value or To Cease Exports of Merchandise.—The administering authority may suspend an investigation if the exporters of the merchandise which is the subject of the investigation who account for substantially all of the imports of that merchandise 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 to eliminate completely any amount by which the foreign market value of the merchandise which is the subject of the agreement exceeds the United States price of that merchandise.

(c) Agreements Eliminating Injurious Effect.—

(1) General rule.—If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement to revise prices from exporters of the merchandise which is the subject of the investigation who account for substantially all of the imports of that merchandise into the United States, if the agreement will eliminate completely the injurious
effect of exports to the United States of that merchandise and if—

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

(B) for each entry of each exporter the amount by which the estimated foreign market value 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.

(2) Definition of extraordinary circumstances.—

(A) Extraordinary circumstances.—For purposes of this subsection, the term "extraordinary circumstances" means circumstances in which—

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

(ii) the investigation is complex.

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

(i) there are a large number of transactions to be investigated or adjustments to be considered,

(ii) the issues raised are novel, or

(iii) the number of firms involved is large.

(d) Additional Rules and Conditions.—The administering authority may not accept an agreement under subsection (b) or (c) unless—

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

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

(e) Suspension of Investigation Procedure.—Before an investigation may be suspended under subsection (b) or (c) the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation,

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced, and of how the agreement will meet the requirements of subsections (b) and (d) or (c) and (d), and

(3) permit all interested parties described in section 771(9) to submit comments and information for the record before the date on which notice of suspension
of the investigation is published under subsection (f)(1)(A).

(f) Effects of Suspension of Investigation.—

(1) In general.—If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c), then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 733(b) with respect to the merchandise which is the subject of the investigation, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) Liquidation of entries.—

(A) Cessation of exports; complete elimination of dumping margin.—If the agreement accepted by the administering authority is an agreement described in subsection (b), then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of merchandise which is the subject of the investigation shall not be suspended under section 733(d)(1),

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 733(d)(1).

(B) Other agreements.—If the agreement accepted by the administering authority is an agreement described in subsection (c), then the liquidation of entries of the merchandise subject to the investigation shall be suspended under section 733(d)(1), or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3), but the security required under sec-
tion 733(d)(2) may be adjusted to reflect the effect of the agreement.

(3) Where investigation is continued.—If, pursuant to subsection (g), the administering authority and the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c), then—

(A) if the final determination by the administering authority or the Commission under section 735 is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue an antidumping duty order in the case so long as—

(i) the agreement remains in force,
(ii) the agreement continues to meet the requirements of subsections (b) and (d) or (c) and (d), and
(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(g) Investigation To Be Continued Upon Request.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) an exporter or exporters accounting for a significant proportion of exports to the United States of the merchandise which is the subject of the investigation, or

(2) an interested party described in subparagraph (C), (D), (E), and (F) of section 771(9) which is a party to the investigation, then the administering authority and the Commission shall continue the investigation.

(h) Review of Suspension.—

(1) In general.—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in subparagraph (C), (D), (E), and (F) of section 771(9) may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) Commission investigation.—Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the merchandise which is the subject of the investigation is eliminated completely by
the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 733(b) had been made on that date.

(3) Suspension of liquidation to continue during review period.—The suspension of liquidation of entries of the merchandise which is the subject of the investigation shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of the affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 733(d)(1), and
(B) release any bond or other security, and refund any cash deposit, required under section 733(d)(2).

(i) Violation of Agreement.—

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

(A) suspend liquidation under section 733(d)(1) of unliquidated entries of the merchandise made on the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or
(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d) or (c) and (d), was first entered, or withdrawn from warehouse, for consumption,

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination under section 733(b) were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g), issue an antidumping duty order
under section 736(a) effective with respect to entries of merchandise the liquidation of which was suspended,

(D) if it considers the violation to be

intentional, notify the Commissioner of Customs who shall take appropriate action under paragraph

(2), and

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

(2) Intentional violation to be punished by civil penalty.—Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedure, as the penalty imposed for a fraudulent violation of section 592(a) of this Act.

(j) Determination Not to Take Agreement Into Account.—In making a final determination under section 735, or in conducting a review under section 751, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1), or continued an investigation under subsection (g), the Commission and the administering authority shall consider all of the merchandise which is the subject of the investigation, without regard to the effect of any agreement under subsection (b) or (c).

(k) Termination of Investigation Initiated by Administering Authority.—The administering authority may terminate any investigation initiated by the administering authority under section 732(a) after providing notice of such termination to all parties to the investigation.

SEC. 735. FINAL DETERMINATIONS.

(a) Final Determination by Administering Authority.—

(1) General rule.—Within 75 days after the date of its preliminary determination under section 733(b), the administering authority shall make a final determination of whether the merchandise which was the subject of the investigation is being, or is likely to be, sold in the United States at less than its fair value.

(2) Extension of period for determination.—The administering authority may postpone making the final determination under paragraph (1) until not later than the 135th day after the date on which it published notice of its preliminary determination under section 733(b) if a request in writing for such a postponement is made by—

(A) exporters who account for a significant proportion of the exports of the merchandise which is the subject of the investigation, in a proceeding in which the preliminary determination
by the administering authority under section 733(b) was affirmative, or
(B) the petitioner, in a proceeding in which the preliminary determination by the administering authority under section 733(b) was negative.

(3) Critical circumstances determinations.—If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 733(e), shall also contain a finding of whether—

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation at less than its fair value, 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 which is the subject of the investigation at less than its fair value, and
(B) there have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

Such findings may be affirmative even though the preliminary determination under section 733(e)(1) was negative.

(b) Final Determination by Commission.—

(1) In general.—The Commission shall make a final determination of whether—

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

(B) the establishment of an industry in the United States is materially retarded, by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a)(1).

(2) Period for injury determination following affirmative preliminary determination by administering authority.—If the preliminary determination by the administering authority under section 733(b) is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 733(b), or
(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a).

(3) Period for injury determination following negative preliminary determination by administering
authority.—If the preliminary determination by the
administering authority under section 733(b) is nega-
tive, and its final determination under subsection (a)
is affirmative, then the final determination by the
Commission under this subsection shall be made within 75
days after the date of that affirmative final
determination.

(4) Certain additional findings.—
(A) If the finding of the administering
authority under subsection (a)(2) is affirmative,
then the final determination of the Commission
shall include a finding as to whether the material
injury is by reason of massive imports described in
subsection (a)(3) to an extent that, in order to
prevent such material injury from recurring, it is
necessary to impose the duty imposed by section 731
retroactively on those imports.

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

(c) Effect of Final Determinations.—
(1) Effect of affirmative determination by the
administering authority.—If the determination of the
administering authority under subsection (a) is affirm-
ate, then—

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

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

(2) Issuance of order; effect of negative determi-
nation.—If the determinations of the administering
authority and the Commission under subsections (a)(1)
and (b)(1) are affirmative, then the administering
authority shall issue an antidumping duty order under
days before the date on which suspension of liqui-
dation is first ordered.

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

SEC. 736. ASSESSMENT OF DUTY.

(a) Publication of Antidumping Duty Order.—Within 7
days after being notified by the Commission of an affirmative
determination under section 735(b), the administering author-
ity shall publish an antidumping duty order which—

(1) directs customs officers to assess an
antidumping duty equal to the amount by which the
foreign market value of the merchandise exceeds the
United States price of the merchandise within 6 months
after the date on which the administering authority
receives satisfactory information upon which the
assessment may be based, but in no event later than—

(A) 12 months after the end of the annual
accounting period of the manufacturer or exporter
within which the merchandise is entered, or with-
drawn from warehouse, for consumption, or

(B) in the case of merchandise not sold prior
to its importation into the United States, 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 the
administering authority deems necessary, and

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

(b) Imposition of Duty.—

(1) General rule.—If the Commission, in its final
determination under section 735(b), finds material
injury or threat of material injury which, but for the
suspension of liquidation under section 733(d)(1), would
have led to a finding of material injury, then entries
of the merchandise subject to the antidumping duty
order, the liquidation of which has been suspended under
section 733(d)(1), shall be subject to the imposition of
antidumping duties under section 731.

(2) Special rule.—If the Commission, in its final
determination under section 735(b), finds threat of
material injury, other than threat of material injury
described in paragraph (1), or material retardation of the establishment of an industry in the United States, then merchandise subject to an antidumping duty order which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of notice of an affirmative determination of the Commission under section 735(b) shall be subject to the imposition of antidumping duties under section 731, and the administering authority shall release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

(c) Security in Lieu of Estimated Duty Pending Early Determination of Duty.—

(1) Conditions for waiver of deposit of estimated duties.—The administering authority may permit, for not more than 90 days after the date of publication of an order under subsection (a), the posting of a bond or other security in lieu of the deposit of estimated antidumping duties required under subsection (a)(3) if, on the basis of information presented to it by any manufacturer, producer, or exporter in such form and within such time as it may require, it is satisfied that it will be able to determine, within 90 days after the date of publication of an order under subsection (a), 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—

(A) an affirmative preliminary determination by the administering authority under section 733(b), or

(B) if its determination under section 733(b) was negative, an affirmative final determination by the administering authority under section 735(a), and before the date of publication of the affirmative final determination by the Commission under section 735(b).

(2) Notice; hearing.—If the administering authority permits the posting of a bond or other security in lieu of the deposit of estimated antidumping duties under paragraph (1), it shall—

(A) publish notice of its action in the Federal Register, and

(B) upon the request of any interested party, hold a hearing in accordance with section 774 before determining the foreign market value and the United States price of the merchandise.

(3) Determinations to be basis of antidumping duty.—The administering authority shall publish notice in the Federal Register of the results of its
determination of foreign market value and United States price, and that determination shall be the basis for the assessment of antidumping duties on entries of merchandise to which the notice under this subsection applies and also shall be the basis for the deposit of estimated antidumping duties on future entries of merchandise of manufacturers, producers, or exporters described in paragraph (1) to which the order issued under subsection (a) applies.

SEC. 737. TREATMENT OF DIFFERENCE BETWEEN DEPOSIT OF ESTIMATED ANTIDUMPING DUTY AND FINAL ASSESSED DUTY UNDER ANTIDUMPING DUTY ORDER.

(a) Deposit of Estimated Antidumping Duty Under Section 733(d)(2).—If the amount of a cash deposit collected as security for an estimated antidumping duty under section 733(d)(2) is different from the amount of the antidumping duty determined under an antidumping duty order issued under section 736, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 735(b) is published shall be—

(1) disregarded, to the extent that the cash deposit collected is lower than the duty under the order, or

(2) refunded, to the extent the cash deposit is higher than the duty under the order.

(b) Deposit of Estimated Antidumping Duty Under Section 736(a)(3).—If the amount of an estimated antidumping duty deposited under section 736(a)(3) is different from the amount of the antidumping duty determined under an antidumping duty order issued under section 736, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative determination of the Commission under section 735(b) is published shall be—

(1) collected, to the extent that the deposit under section 736(a)(3) is lower than the duty determined under the order, or

(2) refunded, to the extent that the deposit under section 736(a)(3) is higher than the duty determined under the order,

together with interest as provided by section 778.

SEC. 738. CONDITIONAL PAYMENT OF ANTIDUMPING DUTY.

(a) General Rule.—For all entries, or withdrawals from warehouse, for consumption of merchandise subject to an antidumping duty order on or after the date of publication of such order, no customs officer may deliver merchandise of that class or kind to the person by whom or for whose account
it was imported unless that person complies with the require-
ments of subsection (b) and deposits with the appropriate
customs officer an estimated antidumping duty in an amount
determined by the administering authority.

(b) Importer Requirements.—In order to meet the
requirements of this subsection, a person shall—

(1) furnish, or arrange to have furnished, to the
appropriate customs officer such information as the
administering authority deems necessary for determining
the United States price of the merchandise imported by
or for the account of that person, and such other
information as the administering authority deems neces-
sary for ascertaining any antidumping duty to be imposed
under this title;

(2) maintain and furnish to the customs officer
such records concerning the sale of the merchandise as
the administering authority, by regulation, requires;

(3) state under oath before the customs officer
that he is not an exporter, or if he is an exporter,
declare under oath at the time of entry the exporter's
sales price of the merchandise to the customs officer if
it is then known, or, if not, so declare within 30 days
after the merchandise has been sold, or has been made
the subject of an agreement to be sold, in the United
States; and

(4) pay, or agree to pay on demand, to the customs
officer the amount of antidumping duty imposed under
section 731 on that merchandise.
Subtitle C—Reviews; Other Actions Regarding Agreements

CHAPTER 1—REVIEW OF AMOUNT OF DUTY AND AGREEMENTS OTHER THAN QUANTITATIVE RESTRICTION AGREEMENTS

SEC. 751. ADMINISTRATIVE REVIEW OF DETERMINATIONS.

(a) Periodic Review of Amount of Duty.--
   (1) In general.—At least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order under this title or under section 303 of this Act, an antidumping duty order under this title or a finding under the Antidumping Act, 1921, or a notice of the suspension of an investigation, the administering authority if a request for such a review has been received and after publication of notice of such review in the Federal Register, shall—
   (A) review and determine the amount of any net subsidy,
   (B) review, and determine (in accordance with paragraph (2)), the amount of any antidumping duty, and
   (C) review the current status of, and compliance with, any agreement by reason of which an investigation was suspended, and review the amount of any net subsidy or margin of sales at less than fair value involved in the agreement, and shall publish the results of such review, together with notice of any duty to be assessed, estimated duty to be deposited, or investigation to be resumed in the Federal Register.

   (2) Determination of antidumping duties.—For the purpose of paragraph (1)(B), the administering authority shall determine—
   (A) the foreign market value and United States price of each entry of merchandise subject to the antidumping duty order and included within that determination, and
   (B) the amount, if any, by which the foreign market value of each such entry exceeds the United States price of the entry.

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

(b) Reviews Upon Information or Request.—
   (1) In general.—Whenever the administering authority [§611(a)(2)(B)(i)]
authority or the Commission receives information concerning, or a request for the review of, an agreement accepted under section 704 (other than a quantitative restriction agreement described in subsection (c)(2) or (c)(3)) or 734 (other than a quantitative restriction agreement described in subsection (a)(2)) or an affirmative determination made under section 704(h)(2), 705(a), 705(b), 734(h)(2), 735(a), 735(b), 762(a)(1), or [§611(a)(2)(B)(ii)] 762(a)(2), which shows changed circumstances sufficient to warrant a review of such determination, it shall conduct such a review after publishing notice of the review in the Federal Register. In reviewing its determination under section 704(h)(2) or 734(h)(2), the Commission shall consider whether, in the light of changed circumstances, an agreement accepted under section 704(c) or 734(c) continues to eliminate completely the injurious effects of imports of the merchandise. During an investigation by the Commission, the party seeking revocation of an antidumping order shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant revocation of the antidumping order. [§611(a)(2)(B)(iii)]

(2) Limitation on period for review.--In the absence of good cause shown--

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

(B) the administering authority may not review a determination under section 705(a) or 735(a), or the suspension of an investigation under section 704 or 734,

less than 24 months after the date of publication of notice of the determination or suspension.

(c) Revocation of Countervailing Duty Order or Anti-dumping Duty Order.—The administering authority may revoke, in whole or in part, a countervailing duty order or an antidumping duty order, or terminate a suspended investigation, after review under this section. The administering authority shall not revoke, in whole or in part, a countervailing duty order or terminate a suspended investigation on the basis of any export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received. Any such revocation or termination shall apply with respect to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on and after a date determined by the administering authority.

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

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

CHAPTER 2—CONSULTATIONS AND DETERMINATIONS REGARDING QUANTITATIVE RESTRICTION AGREEMENTS

SEC. 761. REQUIRED CONSULTATIONS.

(a) Agreements in Response to Subsidies.—Within 90 days after the administering authority accepts a quantitative restriction agreement under section 704(a)(2) or (c)(3), the President shall enter into consultations with the government that is party to the agreement for purposes of—

(1) eliminating the subsidy completely, or
(2) reducing the net subsidy to a level that eliminates completely the injurious effect of exports to the United States of the merchandise.

(b) Modification of Agreements on Basis of Consultations.—At the direction of the President, the administering authority shall modify a quantitative restriction agreement as a result of consultations entered into under subsection (a).

(c) Special Rule Regarding Agreements Under Section 704(c)(3).—This chapter shall cease to apply to a quantitative restriction agreement described in section 704(c)(3) at such time as that agreement ceases to have force and effect under section 704(f) or violation is found under section 704(i).

SEC. 762. REQUIRED DETERMINATIONS.

(a) In General.—Before the expiration date, if any, of a quantitative restriction agreement accepted under section 704(a)(2) or 704(c)(3) (if suspension of the related investigation is still in effect)—

(1) the administering authority shall, at the direction of the President, initiate a proceeding to determine whether any subsidy is being provided with respect to the merchandise subject to the agreement and, if being so provided, the net subsidy; and
(2) if the administering authority initiates a proceeding under paragraph (1), the Commission shall determine whether imports of the merchandise of the
kind subject to the agreement will, upon termination of
the agreement, materially injure, or threaten with
material injury, an industry in the United States or
materially retard the establishment of such an industry.

(b) Determinations.--The determinations required to be
made by the administering authority and the Commission under
subsection (a) shall be made under such procedures as the
administering authority and the Commission, respectively,
shall by regulation prescribe, and shall be treated as final
determinations made under section 705 for purposes of judi­
cial review under section 516A. If the determinations by
each are affirmative, the administering authority shall--

(1) issue a countervailing duty order under
section 706 effective with respect to merchandise
entered on and after the date on which the agreement
terminates; and

(2) order the suspension of liquidation of all
entries of merchandise subject to the order which are
entered, or withdrawn from warehouse for consumption,
on or after the date of publication of the order in the
Federal Register.

(c) Hearings.--The determination proceedings required
to be prescribed under subsection (b) shall provide that the
administering authority and the Commission must, upon the
request of any interested party, hold a hearing in accord­
ance with section 774 c. the issues involved.

Subtitle D—General Provisions

SEC. 771. DEFINITIONS; SPECIAL RULES.

For purposes of this title—

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

(2) Commission.—The term "Commission" means the
United States International Trade Commission.

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

(4) Industry.—

(A) In general.—The term "industry" means [§612(a)(1)]
the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product, except that in the case of wine and grape products subject to investigation under this title, the term also means the domestic producers of the principal raw agricultural product (determined on either a volume or value basis) which is included in the like domestic product, if those producers allege material injury, or threat of material injury, as a result of imports of such wine and grape products.

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

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

(i) the producers within such market sell all or almost all of their production of the like product in question in that market, and

(ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States.

In such appropriate circumstances, material injury, the threat of material injury, or material retardation of the establishment of an industry may be found to exist with respect to an industry even if the domestic industry as a whole, or those producers whose collective output of a like product constitutes a major proportion of the total domestic production of that product, is not injured, if there is a concentration of subsidized or dumped imports into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by material injury, or if the establishment of an industry is being materially retarded, by reason of the subsidized or dumped imports.

(D) Product lines.—The effect of subsidized or dumped imports shall be assessed in relation to the United States production of a like product if available data permit the separate identification of production in terms of such criteria as the
production process or the producer's profits. If
the domestic production of the like product has no
separate identity in terms of such criteria, then
the effect of the subsidized or dumped imports
shall be assessed by the examination of the produc-
tion of the narrowest group or range of products,
which includes a like product, for which the
necessary information can be provided.
(5) Subsidy.—The term "subsidy" has the same
meaning as the term "bounty or grant" as that term is
used in section 303 of this Act, and includes, but is
not limited to, the following:
(A) Any export subsidy described in Annex A
to the Agreement (relating to illustrative list of
export subsidies).
(B) The following domestic subsidies, if
provided or required by government action to a
specific enterprise or industry, or group of
enterprises or industries, whether publicly or
privately owned, and whether paid or bestowed
directly or indirectly on the manufacture, produc-
tion, or export of any class or kind of
merchandise:
(i) The provision of capital, loans, or
loan guarantees on terms inconsistent with
commercial considerations.
(ii) The provision of goods or services
at preferential rates.
(iii) The grant of funds or forgiveness
of debt to cover operating losses sustained by
a specific industry.
(iv) The assumption of any costs or
expenses of manufacture, production, or
distribution.
(6) Net subsidy.—For the purpose of determining
the net subsidy, the administering authority may sub-
tract from the gross subsidy the amount of—
(A) any application fee, deposit, or similar
payment paid in order to qualify for, or to re-
ceive, the benefit of the subsidy,
(B) any loss in the value of the subsidy
resulting from its deferred receipt, if the deferral
is mandated by Government order, and
(C) export taxes, duties, or other charges
levied on the export of merchandise to the United
States specifically intended to offset the subsidy
received.
(7) Material injury.—
(A) In general.—The term "material injury"
means harm which is not inconsequential, immateri-
al, or unimportant.
(B) Volume and consequent impact.—In making
its determinations under sections 703(a), 705(b),
733(a), and 735(b), the Commission shall consider, among other factors--

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

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

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

(C) Evaluation of volume and price effects.—For purposes of subparagraph (B)—

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

(ii) Price.—In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether--

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

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

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

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

(II) factors affecting domestic prices, and

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

(iv) Cumulation.—For purposes of §612(a)(2)(A) clauses (I) and (ii), the Commission shall cumulatively assess the volume and effect of imports from two or more countries of like products subject to investigation if such
imports compete with each other and with like
products of the domestic industry in the
United States market.

(D) Special rules for agricultural
products.--

(i) 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.

(ii) In the case of agricultural pro-
ducts, the Commission shall consider any
increased burden on government income or price
support programs.

(E) Special Rules.--For purposes of this
paragraph--

(i) Nature of subsidy.--In determining
whether there is a threat of material injury,
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 Agree-
ment) provided by a foreign country and the
effects likely to be caused by the subsidy.

(ii) Standard for determination.--The
presence or absence of any factor which the
Commission is required to evaluate under
subparagraph (C) or (D) shall not necessarily
give decisive guidance with respect to the
determination by the Commission of material
injury.

(F) Threat of material injury.--

(1) In general.--In determining whether
an industry in the United States is threat-
ened with material injury by reason of im-
ports (or sales for importation) of any mer-
chandise, the Commission shall consider,
among other relevant economic factors--

(I) If a subsidy is involved, 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 sub-
sidy inconsistent with the Agreement),

(II) any increase in production
capacity or existing unused capacity in
the exporting country likely to result
in a significant increase in imports of
the merchandise to the United States,

(III) any rapid increase in United
States market penetration and the like--
lihood that the penetration will increase to an injurious level,
(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,
(V) any substantial increase in inventories of the merchandise in the United States,
(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,
(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury, and
(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to find orders under section 706 or 736, are also used to produce the merchandise under investigation.

(ii) Basis for determination.—Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition.

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

(9) Interested party.—The term "interested party" means—

(A) a foreign manufacturer, producer, or exporter, or the United States importer, of merchandise which is the subject of an investigation under this title or a trade or business association a majority of the members of which are importers of such merchandise,
(B) the government of a country in which such merchandise is produced or manufactured,
(C) a manufacturer, producer, or wholesaler in the United States of a like product,
(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product,
(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States, and
(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a like product.

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

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

(A) material injury to an industry in the United States,
(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 on any of the issues shall be treated as a vote that the determination should be affirmative.

(12) Attribution of merchandise to country of manufacture or production.—For purposes of subtitle A, merchandise shall be treated as the product of the country in which it was manufactured or produced without regard to whether it is imported directly from that country and without regard to whether it is imported in the same condition as when exported from that country or in a changed condition by reason of remanufacture or otherwise.

(13) Exporter.—For the purpose of determining United States price, the term "exporter" includes the person by whom or for whose account the merchandise is imported into the United States if—

(A) such person is the agent or principal of the exporter, manufacturer, or producer;
(B) such person owns or controls, directly or indirectly, through stock ownership or control or
otherwise, any interest in the business of the exporter, manufacturer, or producer;

(C) the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in any business conducted by such person; or

(D) any person or persons, jointly or sever­ally, directly or indirectly, through stock owner­ship or control or otherwise, own or control in the aggregate 20 percent or more of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 percent or more of such power or control in the business of the exporter, manufacturer, or producer.

(14) Sold or, in the absence of sales, offered for sale.—The term "sold or, in the absence of sales, offered for sale means sold or, in the absence of sales, offered--

[A] to all purchasers in commercial quantities, or

[B] in the ordinary course of trade to one or more selected purchasers in commercial quantities at a price which fairly reflects the market value of the merchandise, without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.

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

(16) Such or similar merchandise.—The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which a determination for the purposes of subtitle B of this title can be satisfactorily made:

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

(B) Merchandise--

(i) produced in the same country and by the same person as the merchandise which is the subject of the investigation,
(ii) like that merchandise in component material or materials and in the purposes for which used, and
(iii) approximately equal in commercial value to that merchandise.

(C) Merchandise—
(i) produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of the investigation,
(ii) like that merchandise in the purposes for which used, and
(iii) which the administering authority determines may reasonably be compared with that merchandise.

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

SEC. 771A. UPSTREAM SUBSIDIES.

(a) Definition.—The term "upstream subsidy" means any subsidy described in section 771(5)(B)(i), (ii), or (iii) by the government of a country that—

(1) is paid or bestowed by that government with respect to a product (hereafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;

(2) in the judgment of the administering authority bestows a competitive benefit on the merchandise; and

(3) has a significant effect on the cost of manufacturing or producing the merchandise.

In applying this subsection, an association of two or more foreign countries, political subdivisions, dependent territories, or possessions of foreign countries organized into a customs union outside the United States shall be treated as being one country if the subsidy is provided by the customs union.

(b) Determination of Competitive Benefit.—

(1) In general.—Except as provided in paragraph (2), the administering authority shall decide that a competitive benefit has been bestowed when the price for the input product referred to in subsection (a)(1)
for such use is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

(2) Adjustments.—If the administering authority has determined in a previous proceeding that a subsidy is paid or bestowed on the input product that is used for comparison under paragraph (1), the administering authority may (A) where appropriate, adjust the price that the manufacturer or producer of merchandise which is the subject of such proceeding would otherwise pay for the product to reflect the effects of the subsidy, or (B) select in lieu of that price a price from another source.

(c) Inclusion of Amount of Subsidy.—If the administering authority decides, during the course of a countervailing duty proceeding that an upstream subsidy is being or has been paid or bestowed regarding the merchandise under investigation, the administering authority shall include in the amount of any countervailing duty imposed on the merchandise an amount equal to the amount of the competitive benefit referred to in subparagraph (1)(B), except that in no event shall the amount be greater than the amount of subsidization determined with respect to the upstream product.

SEC. 772. UNITED STATES PRICE.

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

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

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

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

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

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

(C) 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 are added to or included in the price of such or similar merchandise when sold in the country of exportation; and

(D) the amount of any countervailing duty imposed on the merchandise under subtitle A of this title or section 303 of this Act to offset an export subsidy, and

(2) reduced by—

(A) except as provided in paragraph (1)(D), 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

(B) 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(6)(C).

(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 United States the particular merchandise under consideration,

(2) expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, and

(3) any increased value, including additional material and labor, 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.
SEC. 773. FOREIGN MARKET VALUE.

(a) Determination; Fictitious Market; Sales Agencies.--For purposes of this title--

(1) In general.--The foreign market value of imported merchandise shall be the price, at the time such merchandise is first sold within the United States by the person for whom (or for whose account) the merchandise is imported to any other person who is not described in subsection (e)(3) with respect to such person of such merchandise to the United States--

(A) 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 commercial quantities and in the ordinary course of trade for home consumption, or

(B) if not so sold or offered for sale for home consumption, or if the administering authority determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States increased by, 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. In the ascertainment of foreign market value for the purposes of this title no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account.

(2) Use of constructed value.--If the administering authority determines that the foreign market value of imported merchandise cannot be determined under paragraph (1)(A), then, notwithstanding paragraph (1)(B), the foreign market value of the merchandise may be the constructed value of that merchandise, as determined under subsection (e).

(3) Indirect sales and offers for sale.--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), the prices 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 determining the foreign market value.

(4) Other adjustments.—In determining foreign market value, if it is established to the satisfaction of the administering authority that the amount of any difference between the United States price and the foreign market value (or that the fact that the United States price is the same as the foreign market value) is wholly or partly due to—

(A) the fact that the commercial quantities, in which such or similar merchandise is sold or, in the absence of sales, offered for sale, for exportation to, or in the principal markets of, the United States, as appropriate, in the ordinary course of trade, are less or are greater than the commercial quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale, in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold for home consumption, then for exportation to countries other than the United States);

(B) other differences in circumstances of sale; or

(C) the fact that merchandise described in paragraph (B) or (C) of section 771(16) is used in determining foreign market value,

then due allowance shall be made therefor.

(b) Sales at Less Than Cost of Production.—Whenever the administering authority has reasonable grounds to believe or suspect that sales in the home market of the country of exportation, or, as appropriate, to countries other than the United States, have been made at prices which represent less than the cost of producing the merchandise in question, it shall determine whether, in fact, such sales were made at less than the cost of producing the merchandise. If the administering authority determines that sales made at less than cost of production—

(1) have been made over an extended period of time in substantial quantities, and

(2) are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade,
such sales shall be disregarded in the determination of foreign market value. Whenever sales are disregarded by virtue of having been made at less than the cost of production and the remaining sales, made at not less than cost of production, are determined to be inadequate as a basis for the determination of foreign market value under subsection (a), the administering authority shall employ the constructed value of the merchandise to determine its foreign market value.
differences are demonstrated to its satisfaction. For the purposes of this subsection, in determining foreign market value of such or similar merchandise produced in a country outside of the country of exportation, the administering authority shall determine its price at the time of exportation from the country of exportation and shall make any adjustments required by subsection (a) of this section for the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States by reference to such costs in the country of exportation.

(e) Constructed Value.--

(1) Determination.—For the purposes of this title, the constructed value of imported merchandise shall be the sum of—

(A) the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article 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;

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

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

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

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

(2) Transactions disregarded; best evidence.—For the purposes of this subsection, a transaction directly or indirectly between persons specified in any one of the subparagraphs in paragraph (3) of this subsection may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration of
(c) State-Controlled Economies.—If available information indicates to the administering authority that the economy of the country from which the merchandise is exported is State-controlled to an extent that sales or offers of 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 subsection (a) of this section, the administering authority shall determine the foreign market value of the merchandise on the basis of the normal costs, expenses, and profits as reflected by either—

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

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

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

(2) the constructed value of such or similar merchandise in a non-State-controlled-economy country or countries as determined under subsection (e).

(d) Special Rule for Certain Multinational Corporations.—Whenever, in the course of an investigation under this title, the administering authority determines that—

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

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

(3) the foreign market value of such or similar merchandise produced in one or more of the facilities outside the country of exportation is higher than the foreign market value of such or similar merchandise produced in the facilities located in the country of exportation,

it shall determine the foreign market value of such merchandise by reference to the foreign market value at which such or similar merchandise is sold in substantial quantities by one or more facilities outside the country of exportation.

The administering authority, in making any determination under this paragraph, shall make adjustments for the difference between the costs of production (including taxes, labor, materials, and overhead) of such or similar merchandise produced in facilities outside the country of exportation and costs of production of such or similar merchandise produced in the facilities in the country of exportation, if such
merchandise under consideration. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, then the determination of the amount required to be con­
dered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between persons not specified in any one of the subparagraphs in paragraph (3) of this section.

(3) Related parties.—The persons referred to in paragraph (2) of this subsection are:

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

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

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirect­ly controlling, controlled by, or under common control with, any person.

(g) Exportation From an Intermediate Country.—If—

(1) a reseller purchases the merchandise from the manufacturer or producer of the merchandise,

(2) the manufacturer or producer of the merchan­
dise does not know (at the time of the sale to such reseller) the country to which such reseller intends to export the merchandise,

(3) the merchandise is exported by, or on behalf of, such reseller to a country other than the United States,

(4) the merchandise enters the commerce of such country but is not substantially transformed in such country, and

(5) the merchandise is subsequently exported to the United States,

such country shall be treated, for purposes of this section, as the country from which the merchandise was exported.

SEC. 774. HEARINGS.

(a) Investigations Hearings.—

(1) In general.—Except as provided in paragraph (2), the administering authority and the Commission shall each hold a hearing in the course of an investi­
gation upon the request of any party to the investiga­
tion before making a final determination under section 705 or 735.
(2) Exception.—If investigations are initiated under subtitle A and subtitle B regarding the same merchandise from the same country within 6 months of each other (but before a final determination is made in either investigation), the holding of a hearing by the Commission in the course of one of the investigations shall be treated as compliance with paragraph (1) for both investigations, unless the Commission considers that special circumstances require that a hearing be held in the course of each of the investigations. During any investigation regarding which the holding of a hearing is waived under this paragraph, the Commission shall allow any party to submit such additional written comment as it considers relevant.

(b) Procedures.—Any hearing required or permitted under this title shall be conducted after notice published in the Federal Register, and a transcript of the hearing shall be prepared and made available to the public. The hearing shall not be subject to the provisions of subchapter II of chapter 5 of title 5, United States Code, or to section 702 of such title.

SEC. 775. SUBSIDY PRACTICES DISCOVERED DURING AN PROCEEDING.

If, in the course of an proceeding under this title, the administering authority discovers a practice which appears to be a subsidy, but was not included in the matters alleged in a countervailing duty petition, then the administering authority—

(1) shall include the practice in the proceeding if it appears to be a subsidy with respect to the merchandise which is the subject of the proceeding, or

(2) shall transfer the information concerning the practice (other than confidential information) to the library maintained under section 777(a)(1), if the practice appears to be a subsidy with respect to any other merchandise.

SEC. 776. VERIFICATION OF INFORMATION.

(a) General Rule.—The administering authority shall verify all information relied upon in making—

(1) a final determination in an investigation,
(2) a revocation under section 751(c), and
(3) a review and determination under section 751(a), if—

(A) verification is timely requested by an interested party as defined in section 771(9)(C), (D), (E), or (F), and
(B) no verification was made under this paragraph during the 2 immediately preceding
reviews and determinations under that section of the same order, finding, or notice, except that this clause shall not apply if good cause for verification is shown.

In publishing notice of any action referred to in paragraph (1), (2), or (3), the administering authority shall report the methods and procedures used to verify such information. If the administering authority is unable to verify the accuracy of the information submitted, it shall use the best information available to it as the basis for its action, which may include, in actions referred to in paragraph (1), the information submitted in support of the petition.

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

SEC. 777. ACCESS TO INFORMATION.

(a) Information Generally Made Available.—

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

(2) Progress of investigation reports.—The administering authority and the Commission shall, from time to time upon request, inform the parties to an investigation of the progress of that investigation.

(3) Ex parte meetings.—The administering authority and the Commission shall maintain a record of any ex parte meeting between—

(A) interested parties or other persons providing factual information in connection with a proceeding, and

(B) the person charged with making the determination, or any person charged with making a final recommendation to that person, in connection with that proceeding, if information relating to that proceeding was presented or discussed at such meeting. The record of such an ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the ex parte meeting shall be included in the record of the proceeding.
(4) Summaries; nonconfidential submissions.—The administering authority and the Commission may disclose—

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

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

(b) Confidential Information.—

(1) Confidentiality maintained.—Except as provided in subsection (a)(4)(A) and subsection (c), information submitted to the administering authority or the Commission which is designated as confidential by the person submitting it shall not be disclosed to any person (other than an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted, or an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this title) without the consent of the person submitting it. The administering authority and the Commission shall require that information for which confidential treatment is requested be accompanied by—

(A) either—

(i) a nonconfidential summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or

(ii) a statement that the information is not susceptible to summary accompanied by a statement of the reasons in support of the contention, and

(B) either—

(i) a statement which permits the administering authority to release under administrative protective order in accordance with subsection (c), the information submitted in confidence, or

(ii) a statement that the information should not be released under administrative protective order.

(2) Unwarranted designation.—If the administering authority or the Commission determines, on the basis of the nature and extent of the information or its availability from public sources, that designation of any information as confidential is unwarranted, then it shall notify the person who submitted it and ask for an explanation of the reasons for the designation. Unless
that person persuades the administering authority or the Commission that the designation is warranted, or withdraws the designation, the administering authority or the Commission, as the case may be, shall return it to the party submitting it.

(c) Limited Disclosure of Certain Confidential Information Under Protective Order.--

(1) Disclosure by administering authority or Commission.--

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

(B) Protective order.—The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

(2) Disclosure under court order.—If the administering authority denies a request for information under paragraph (1), or the Commission denies a request for confidential information submitted by the petitioner or an interested party in support of the petitioner concerning the domestic price or cost of production of the like product, then application may be made to the United States Court of International Trade for an order directing the administering authority or the Commission to make the information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court may issue an order, under such conditions as the court deems appropriate, which shall not have the effect of stopping or suspending the investigation, directing the administering authority or the Commission to make all or a portion of the requested information described in the preceding sentence available under a protective order and setting forth sanctions for violation of such order if the court finds that, under the standards applicable in proceedings of the court, such an order is warranted, and that—

(A) the administering authority or the Commission has denied access to the information under subsection (b)(1),
(B) the person on whose behalf the information is requested is an interested party who is a party to the investigation in connection with which the information was obtained or developed, and
(C) the party which submitted the information to which the request relates has been notified, in advance of the hearing, of the request made under this section and of its right to appear and be heard.

SEC. 777A. SAMPLING AND AVERAGING.

(a) In General.—For the purpose of determining United States price or foreign market value under sections 772 and 773, and for purposes of carrying out annual reviews under section 751, the administering authority may—
(1) use averaging or generally recognized sampling techniques whenever a significant volume of sales is involved or a significant number of adjustments to prices is required, and
(2) decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.

(b) Selection of Samples and Averages.—The authority to select appropriate samples and averages shall rest exclusively with the administering authority; but such samples and averages shall be representative of the transactions under investigation.

SEC. 778. INTEREST ON CERTAIN OVERPAYMENTS AND UNDERPAYMENTS.

(a) General Rule.—Interest shall be payable on overpayments and underpayments of amounts deposited on merchandise entered, or withdrawn from warehouse, for consumption on and after—
(1) the date of publication of a countervailing or antidumping duty order under this title or section 303, or
(2) the date of a finding under the Antidumping Act, 1921.

(b) Rate.—The rate of interest payable under subsection (a) for any period of time is the rate of interest established under section 6621 of the Internal Revenue Code of 1954 for such period.

SEC. 779. DRAWBACKS.

For purposes of any law relating to the drawback of customs duties, countervailing and antidumping duties
imposed by this title shall be treated as any other customs duties.
SEC. 516A. JUDICIAL REVIEW IN COUNTERVAILING DUTY AND
ANTIDUMPING DUTY PROCEEDINGS.

(a) Review of Determination.--

(1) Review of certain determinations.--Within 30

days after the date of publication in the Federal

Register of--

(A) a determination by the administering

authority, under 702(c) or 732(c) of this Act,

not to initiate an investigation,

(B) a determination by the Commission, under

section 751(b) of this Act, not to review a deter-

mination based upon changed circumstances, or

(C) a negative determination by the Commis-

sion, under section 703(a) or 733(a) of this Act,

as to whether there is reasonable indication of

material injury, threat of material injury, or

material retardation,

an interested party who is a party to the proceeding in
connection with which the matter arises may commence an
action in the United States Court of International
Trade by filing concurrently a summons and complaint,
each with the content and in the form, manner, and
style prescribed by the rules of that court, contesting
any factual findings or legal conclusions upon which
the determination is based.

(2) Review of determinations on record.--

(A) In general.--Within thirty days after--

(i) the date of publication in the

Federal Register of--

(I) notice of any determination

described in clause (ii), (iii), (iv),
or (v) of subparagraph (B), or

(II) an antidumping or counter-
vailing duty order based upon any deter-
mination described in clause (i) of

subparagraph (B), or

(ii) the date of mailing of a determi-
nation described in clause (vi) of subpara-

graph (B),

an interested party who is a party to the proceed-
ing in connection with which the matter arises may
commence an action in the United States Court of
International Trade by filing a summons, and within
thirty days thereafter a complaint, each with the content and in the form, manner, and style pre-
scribed by the rules of that court, contesting any
factual findings or legal conclusions upon which
the determination is based.

(B) Reviewable determinations.--The determi-
nations which may be contested under subparagraph
(A) are as follows:

[§623(a)(1)]

[§623(a)(2)(A)]

[§623(a)(3)]
(i) Final affirmative determinations by the administering authority and by the Commission under section 705 or 735 of this Act, including any negative part of such a determination (other than a part referred to in clause (ii)).

(ii) A final negative determination by the administering authority or the Commission under section 705 or 735 of this Act, including, at the option of the appellant, any part of a final affirmative determination which specifically excludes any company or product.

(iii) A final determination, other than a determination reviewable under paragraph (1), by the administering authority or the Commission under section 751 of this Act.

(iv) A determination by the administering authority, under section 704 or 734 of this Act, to suspend an antidumping duty or a countervailing duty investigation, including any final determination resulting from a continued investigation which changes the size of the dumping margin or net subsidy calculated, or the reasoning underlying such calculations, at the time the suspension agreement was concluded.

(v) An injurious effect determination by the Commission under section 704(h) or 734(h) of this Act.

(vi) A determination by the administering authority as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or countervailing duty order.

(3) Exception.—Notwithstanding the limitation imposed by paragraph (2)(A)(ii) of this subsection, a final affirmative determination by the administering authority under section 705 or 735 of this Act may be contested by commencing an action, in accordance with the provisions of paragraph (2)(A), within thirty days after the date of publication in the Federal Register of a final negative determination by the Commission under section 705 or 735 of this Act.

(4) Procedures and fees.—The procedures and fees set forth in chapter 169 of title 28, United States Code, apply to an action under this section.

(b) Standards of Review.—

(1) Remedy.—The court shall hold unlawful any determination, finding, or conclusion found—

(A) in an action brought under paragraph (1) of subsection (a), to be arbitrary, capricious, an
abuse of discretion, or otherwise not in accordance with law, or

(B) in an action brought under paragraph (2) of subsection (a), to be unsupported by substantial evidence on the record, or otherwise not in accordance with law.

(2) Record for review.—

(A) In general.—For the purposes of this subsection, the record, unless otherwise stipulated by the parties, shall consist of—

(i) a copy of all information presented to or obtained by the Secretary, the administering authority, or the Commission during the course of the administrative proceeding, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be kept by section 777(a)(3); and

(ii) a copy of the determination, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

(B) Confidential or privileged material.—The confidential or privileged status accorded to any documents, comments, or information shall be preserved in any action under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, and may disclose such material under such terms and conditions as it may order.

(c) Liquidation of Entries.—

(1) Liquidation in accordance with determination.—Unless such liquidation is enjoined by the court under paragraph (2) of this subsection, entries of merchandise of the character covered by a determination of the Secretary, the administering authority, or the Commission contested under subsection (a) of this section shall be liquidated in accordance with the determination of the Secretary, the administering authority, or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the the Federal Register by the Secretary or the administering authority of a notice of a decision of the United States Court of International Trade, or of the United States Court of Appeals for the Federal Circuit, not in harmony with that determination. Such notice of a decision shall be published within ten days from the date of the issuance of the court decision.

(2) Injunctive relief.—In the case of a determination described in paragraph (2) of subsection (a) of this section by the Secretary, the administering authority, or the Commission, the United States Court of
International Trade may enjoin the liquidation of some or all entries of merchandise covered by a determination of the Secretary, the administering authority, or the Commission, upon a request by an interested party for such relief and a proper showing that the requested relief should be granted under the circumstances.

(3) Remand for final disposition.—If the final disposition of an action brought under this section is not in harmony with the published determination of the Secretary, the administering authority, or the Commission, the matter shall be remanded to the Secretary, the administering authority, or the Commission, as appropriate, for disposition consistent with the final disposition of the court.

(d) Standing.—Any interested party who was a party to the proceeding under section 303 or title VII of this Act shall have the right to appear and be heard as a party in interest before the United States Court of International Trade. The party filing the action shall notify all such interested parties of the filing of an action under this section, in the form, manner, style, and within the time prescribed by rules of the court.

(e) Liquidation in accordance with final decision.—If the cause of action is sustained in whole or in part by a decision of the United States Court of International Trade or of the United States Court of Appeals for the Federal Circuit—

(1) entries of merchandise of the character covered by the published determination of the Secretary, the administering authority, or the Commission, which is entries, or withdrawn from warehouse, for consumption after the date of publication in the Federal Register by the Secretary or the administering authority of a notice of the court decision, and

(2) entries, the liquidation of which was enjoined under subsection (c)(2),

shall be liquidated in accordance with the final court decision in the action. Such notice of the court decision shall be published with ten days from the date of the issuance of the court decision.

(f) Definitions.—For purposes of this section—

(1) Administering authority.—The term "administering authority" means the administering authority described in section 771(1) of this Act.


(3) Interested Party.—The term "interested party" means any person described in section 771(9) of this Act.

(4) Secretary.—The term "Secretary" means the Secretary of the Treasury.