antidumping proceedings involving imports from a nonmarket economy
country.

(b) Cash deposit rates for nonproducing exporters—(1) Use of combination rates—

(i) In general. In the case of subject merchandise that is exported to the
United States by a company that is not the producer of the merchandise, the
Secretary may establish a “combination” cash deposit rate for each combi-
nation of the exporter and its supplying producer(s).

(ii) Example. A nonproducing exporter (Exporter A) exports to the United
States subject merchandise produced by Producers X, Y, and Z. In such a sit-
uation, the Secretary may establish cash deposit rates for Exporter A/Pro-
ducer X, Exporter A/Producer Y, and Exporter A/Producer Z.

(ii) New supplier. In the case of subject merchandise that is exported to the
United States by a company that is not the producer of the merchandise, if the
Secretary has not established previously a combination cash deposit
rate under paragraph (b)(1)(i) of this section for the exporter and producer
in question or a noncombination rate for the exporter in question, the Sec-
retary will apply the cash deposit rate established for the producer. If the Sec-
retary has not previously established a cash deposit rate for the producer, the
Secretary will apply the “all-others rate” described in section 705(c)(5) or section 735(c)(5)
of the Act, as the case may be.

(c) Producer not identified—(1) In gen-
eral. In situations where entry docu-
ments do not identify the producer of
subject merchandise, if the Secretary
has not established previously a non-
combination rate for the exporter, the
Secretary may instruct the Customs
Service to apply as the cash deposit
rate the higher of:

(i) The highest of any combination
cash deposit rate established for the
exporter under paragraph (b)(1)(i) of this
section;

(ii) The highest cash deposit rate es-

tablished for any producer other than a
producer for which the Secretary es-

tablished a combination rate involving
the exporter in question under para-

graph (b)(1)(i) of this section; or

(iii) The “all-others rate” described
in section 705(c)(5) or section 735(c)(5)
of the Act, as the case may be.

(2) [Reserved]

(d) Rates in antidumping proceedings

involving nonmarket economy countries.

In an antidumping proceeding involv-
ing imports from a nonmarket econ-
omy country, “rates” may consist of a
single dumping margin applicable to
all exporters and producers.

Subpart B—Antidumping and
Countervailing Duty Procedures

§ 351.201 Self-initiation.

(a) Introduction. Antidumping and
countervailing duty investigations
may be initiated as the result of a peti-
tion filed by a domestic interested
party or at the Secretary’s own initia-
tive. This section contains rules re-
garding the actions the Secretary will
take when the Secretary self-initiates
an investigation.

(b) In general. When the Secretary
self-initiates an investigation under
section 702(a) or section 732(a) of the
Act, the Secretary will publish in the
FEDERAL REGISTER notice of “Initi-
ation of Antidumping (Countervailing
Duty) Investigation.” In addition, the
Secretary will notify the Commission
at the time of initiation of the inves-
tigation, and will make available to
employees of the Commission directly
involved in the proceeding the informa-
tion upon which the Secretary based
the initiation and which the Commis-
sion may consider relevant to its in-
jury determination.

(c) Persistent dumping monitoring. To
the extent practicable, the Secretary
will expedite any antidumping inves-
tigation initiated as the result of a
monitoring program established under
section 732(a)(2) of the Act.

§ 351.202 Petition requirements.

(a) Introduction. The Secretary nor-

mally initiates antidumping and coun-
tervailing duty investigations based on
petitions filed by a domestic interested
party. This section contains rules con-
cerning the contents of a petition, fil-
ing requirements, notification of for-

eign governments, pre-initiation com-

munications with the Secretary, and
assistance to small businesses in preparing petitions. Petitioners are also advised to refer to the Commission’s regulations concerning the contents of petitions, currently 19 CFR 207.11.

(b) Contents of petition. A petition requesting the imposition of antidumping or countervailing duties must contain the following, to the extent reasonably available to the petitioner:

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

(2) The identity of the industry on behalf of which the petitioner is filing, including the names, addresses, and telephone numbers of all other known persons in the industry;

(3) Information relating to the degree of industry support for the petition, including:
   (i) The total volume and value of U.S. production of the domestic like product; and
   (ii) The volume and value of the domestic like product produced by the petitioner and each domestic producer identified;

(4) A statement indicating whether the petitioner has filed for relief from imports of the subject merchandise under section 337 of the Act (19 U.S.C. 1337, 1671a), sections 201 or 301 of the Trade Act of 1974 (19 U.S.C. 2251 or 2411), or section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862);

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

(6) The name of the country in which the subject merchandise is manufactured or produced and, if the merchandise is imported from a country other than the country of manufacture or production, the name of any intermediate country from which the merchandise is imported;

(7)(i) In the case of an antidumping proceeding:
   (A) The names and addresses of each person the petitioner believes sells the subject merchandise at less than fair value and the proportion of total exports to the United States that each person accounted for during the most recent 12-month period (if numerous, provide information at least for persons that, based on publicly available information, individually accounted for two percent or more of the exports);
   (B) All factual information (particularly documentary evidence) relevant to the calculation of the export price and the constructed export price of the subject merchandise and the normal value of the foreign like product (if unable to furnish information on foreign sales or costs, provide information on production costs in the United States, adjusted to reflect production costs in the country of production of the subject merchandise);
   (C) If the merchandise is from a country that the Secretary has found to be a nonmarket economy country, factual information relevant to the calculation of normal value, using a method described in §351.408; or
   (ii) In the case of a countervailing duty proceeding:
   (A) The names and addresses of each person the petitioner believes benefits from a countervailable subsidy and exports the subject merchandise to the United States and the proportion of total exports to the United States that each person accounted for during the most recent 12-month period (if numerous, provide information at least for persons that, based on publicly available information, individually accounted for two percent or more of the exports);
   (B) The alleged countervailable subsidy and factual information (particularly documentary evidence) relevant to the alleged countervailable subsidy, including any law, regulation, or decree under which it is provided, the manner in which it is paid, and the value of the subsidy to exporters or producers of the subject merchandise;
   (C) If the petitioner alleges an upstream subsidy under section 771A of the Act, factual information regarding:
      (1) Countervailable subsidies, other than an export subsidy, that an authority of the affected country provides to the upstream supplier;
      (2) The competitive benefit the countervailable subsidies bestow on the subject merchandise; and
      (3) The significant effect the countervailable subsidies have on the
cost of producing the subject merchandise;

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

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

(10) Factual information regarding material injury, threat of material injury, or material retardation, and causation;

(11) If the petitioner alleges “critical circumstances” under section 703(e)(1) or section 733(e)(1) of the Act and §351.206, factual information regarding:
   (i) Whether imports of the subject merchandise are likely to undermine seriously the remedial effect of any order issued under section 706(a) or section 736(a) of the Act;
   (ii) Massive imports of the subject merchandise in a relatively short period; and
   (iii) (A) In an antidumping proceeding, either:
   (1) A history of dumping; or
   (2) The importer’s knowledge that the exporter was selling the subject merchandise at less than its fair value, and that there would be material injury by reason of such sales; or
   (B) In a countervailing duty proceeding, whether the countervailable subsidy is inconsistent with the Subsidies Agreement; and
   (12) Any other factual information on which the petitioner relies.

(c) Simultaneous filing and certification. The petitioner must file a copy of the petition with the Commission and the Secretary on the same day and so certify in submitting the petition to the Secretary. Factual information in the petition must be certified, as provided in §351.303(g). Other filing requirements are set forth in §351.303.

(d) Business proprietary status of information. The Secretary will treat as business proprietary any factual information for which the petitioner requests business proprietary treatment and which meets the requirements of §351.304.

(e) Amendment of petition. The Secretary may allow timely amendment of the petition. The petitioner must file an amendment with the Commission and the Secretary on the same day and so certify in submitting the amendment to the Secretary. If the amendment consists of new allegations, the timeliness of the new allegations will be governed by §351.301.

(f) Notification of representative of the exporting country. Upon receipt of a petition, the Secretary will deliver a public version of the petition (see §351.304(c)) to a representative in Washington, DC, of the government of any exporting country named in the petition.

(g) Petition based upon derogation of an international undertaking on official export credits. In the case of a petition described in section 702(b)(3) of the Act, the petitioner must file a copy of the petition with the Secretary of the Treasury, as well as with the Secretary and the Commission, and must so certify in submitting the petition to the Secretary.

(h) Assistance to small businesses; additional information. (1) The Secretary will provide technical assistance to eligible small businesses, as defined in section 339 of the Act, to enable them to prepare and file petitions. The Secretary may deny assistance if the Secretary concludes that the petition, if filed, could not satisfy the requirements of section 702(c)(1)(A) or section 732(c)(1)(A) of the Act (whichever is applicable) (see §351.203).

   (2) For additional information concerning petitions, contact the Director for Policy and Analysis, Enforcement and Compliance, International Trade Administration, Room 3093, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; (202) 482–1768.

   (i) Pre-initiation communications—(1) In general. During the period before the Secretary’s decision whether to initiate an investigation, the Secretary will not consider the filing of a notice of appearance to constitute a communication for purposes of section
§ 351.203 Determination of sufficiency of petition.

(a) Introduction. When a petition is filed under § 351.202, the Secretary must determine that the petition satisfies the relevant statutory requirements before initiating an antidumping or countervailing duty investigation. This section sets forth rules regarding a determination as to the sufficiency of a petition (including the determination that a petition is supported by the domestic industry), the deadline for making the determination, and the actions to be taken once the Secretary has made the determination.

(b) Determination of sufficiency—(1) In general. Normally, not later than 20 days after a petition is filed, the Secretary, on the basis of sources readily available to the Secretary, will examine the accuracy and adequacy of the evidence provided in the petition and determine whether to initiate an investigation under section 702(c)(1)(A) or section 732(c)(1)(A) of the Act or section 702(c)(1)(A) of the Act of the Act is affirmative, the Secretary will initiate an investigation and publish in the FEDERAL REGISTER notice of ‘‘Initiation of Antidumping (Countervailing Duty) Investigation.’’ The Secretary will notify the Commission at the time of initiation of the investigation and will make available to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

(c) Notice of initiation and distribution of petition—(1) Notice of initiation. If the Secretary determines that industry support under section 702(c)(1)(A) of the Act is affirmative, the Secretary will initiate an investigation and publish in the FEDERAL REGISTER notice of ‘‘Initiation of Antidumping (Countervailing Duty) Investigation.’’ The Secretary will notify the Commission at the time of initiation of the investigation and will make available to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

(d) Distribution of petition. As soon as practicable after initiation of an investigation, the Secretary will provide a public version of the petition to all known exporters (including producers who sell for export to the United States) of the subject merchandise. If the Secretary determines that there is a particularly large number of exporters involved, instead of providing the public version to all known exporters, the Secretary may provide the public version to a trade association of the exporters or, alternatively, may consider the requirement of the preceding sentence to have been satisfied by the delivery of a public version of the petition to the government of the exporting country under § 351.202(f).

(e) Insufficiency of petition. If an initiation determination of the Secretary under section 702(c)(1)(A) or section 732(c)(1)(A) of the Act is negative, the Secretary will dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and publish in the FEDERAL REGISTER notice of ‘‘Dismissal of Antidumping (Countervailing Duty) Petition.’’

(f) Determination of industry support. In determining industry support for a petition under section 702(c)(1)(A) or section 732(c)(4)(A) of the Act, the following rules will apply:

(1) Measuring production. The Secretary normally will measure production over a twelve-month period specified by the Secretary, and may measure production based on either value or volume. Where a party to the proceeding establishes that production data for the relevant period, as specified by the Secretary, is unavailable, production levels may be established.
by reference to alternative data that the Secretary determines to be indicative of production levels.

(2) Positions treated as business proprietary information. Upon request, the Secretary may treat the position of a domestic producer or workers regarding the petition and any production information supplied by the producer or workers as business proprietary information under §351.105(c)(10).

(3) Positions expressed by workers. The Secretary will consider the positions of workers and management regarding the petition to be of equal weight. The Secretary will assign a single weight to the positions of both workers and management according to the production of the domestic like product of the firm in which the workers and management are employed. If the management of a firm expresses a position in direct opposition to the position of the workers in that firm, the Secretary will treat the production of that firm as representing neither support for, nor opposition to, the petition.

(4) Certain positions disregarded. (i) The Secretary will disregard the position of a domestic producer that opposes the petition if such producer is related to a foreign producer or to a foreign exporter under section 771(4)(B)(ii) of the Act, unless such domestic producer demonstrates to the Secretary’s satisfaction that its interests as a domestic producer would be adversely affected by the imposition of an antidumping order or a countervailing duty order, as the case may be; and

(ii) The Secretary may disregard the position of a domestic producer that is an importer of the subject merchandise, or that is related to such an importer, under section 771(4)(B)(ii) of the Act.

(5) Polling the industry. In conducting a poll of the industry under section 702(c)(4)(D)(1) or section 732(c)(4)(D)(1) of the Act, the Secretary will include unions, groups of workers, and trade or business associations described in paragraphs (9)(D) and (9)(E) of section 771 of the Act.

(f) Time limits where petition involves same merchandise as that covered by an order that has been revoked. Under section 702(c)(1)(C) or section 732(c)(1)(C) of the Act, and in expediting an investigation involving subject merchandise for which a prior order was revoked or a suspended investigation was terminated, the Secretary will consider “section 751(d)” as including a predecessor provision.

§ 351.204 Time periods and persons examined; voluntary respondents; exclusions.

(a) Introduction. Because the Act does not specify the precise period of time that the Secretary should examine in an antidumping or countervailing duty investigation, this section sets forth rules regarding the period of investigation (“POI”). In addition, this section includes rules regarding the selection of persons to be examined, the treatment of voluntary respondents that are not selected for individual examination, and the exclusion of persons that the Secretary ultimately finds are not dumping or are not receiving countervailable subsidies.

(b) Period of investigation—(1) Antidumping investigation. In an antidumping investigation, the Secretary normally will examine merchandise sold during the four most recently completed fiscal quarters (or, in an investigation involving merchandise imported from a nonmarket economy country, the two most recently completed fiscal quarters) as of the month preceding the month in which the petition was filed or in which the Secretary self-initiated an investigation. However, the Secretary may examine merchandise sold during any additional or alternate period that the Secretary concludes is appropriate.

(2) Countervailing duty investigation. In a countervailing duty investigation, the Secretary normally will rely on information pertaining to the most recently completed fiscal year for the government and exporters or producers in question. If the exporters or producers have different fiscal years, the Secretary normally will rely on information pertaining to the most recently completed calendar year. If the investigation is conducted on an aggregate basis under section 777A(e)(2)(B) of the Act, the Secretary normally will rely on information pertaining to the most recently completed fiscal year for the
government in question. However, the Secretary may rely on information for any additional or alternate period that the Secretary concludes is appropriate.

(c) Exporters and producers examined—
(1) In general. In an investigation, the Secretary will attempt to determine an individual weighted-average dumping margin or individual countervailable subsidy rate for each known exporter or producer of the subject merchandise. However, the Secretary may decline to examine a particular exporter or producer if that exporter or producer and the petitioner agree.

(2) Limited investigation. Notwithstanding paragraph (c)(1) of this section, the Secretary may limit the investigation by using a method described in subsection (a), (c), or (e) of section 777A of the Act.

(d) Voluntary respondents—(1) In general. If the Secretary limits the number of exporters or producers to be individually examined under section 777A(c)(2) or section 777A(e)(2)(A) of the Act, the Secretary will examine voluntary respondents (exporters or producers, other than those initially selected for individual examination) in accordance with section 782(a) of the Act.

(2) Acceptance of voluntary respondents. The Secretary will determine, as soon as practicable, whether to examine a voluntary respondent individually. A voluntary respondent accepted for individual examination under subparagraph (d)(1) of this section will be subject to the same requirements as an exporter or producer initially selected by the Secretary for individual examination under section 777A(c)(2) or section 777A(e)(2)(A) of the Act, including the requirements of section 782(a) of the Act and, where applicable, the use of the facts available under section 776 of the Act and §351.308.

(3) Exclusion of voluntary respondents’ rates from all-others rate. In calculating an all-others rate under section 705(c)(5) or section 735(c)(5) of the Act, the Secretary will exclude weighted-average dumping margins or countervailable subsidy rates calculated for voluntary respondents.

(4) Requests for voluntary respondent treatment. An interested party seeking treatment as a voluntary respondent must so indicate by including as a title on the first page of the first submission, “Request for Voluntary Respondent Treatment.”

(e) Exclusions—(1) In general. The Secretary will exclude from an affirmative final determination under section 705(a) or section 735(a) of the Act or an order under section 706(a) or section 736(a) of the Act, any exporter or producer for which the Secretary determines an individual weighted-average dumping margin or individual net countervailable subsidy rate of zero or de minimis.

(2) Preliminary determinations. In an affirmative preliminary determination under section 705(b) or section 735(b) of the Act, an exporter or producer for which the Secretary preliminarily determines an individual weighted-average dumping margin or individual net countervailable subsidy of zero or de minimis will not be excluded from the preliminary determination or the investigation. However, the exporter or producer will not be subject to provisional measures under section 705(d) or section 735(d) of the Act.

(3) Exclusion of nonproducing exporter—(1) In general. In the case of an exporter that is not the producer of subject merchandise, the Secretary normally will limit an exclusion of the exporter to subject merchandise of those producers that supplied the exporter during the period of investigation.

(ii) Example. During the period of investigation, Exporter A exports to the United States subject merchandise produced by Producer X. Based on an examination of Exporter A, the Secretary determines that the dumping margins with respect to these exports are de minimis, and the Secretary excludes Exporter A. Normally, the exclusion of Exporter A would be limited to subject merchandise produced by Producer X. If Exporter A began to export subject merchandise produced by Producer Y, this merchandise would be subject to the antidumping duty order, if any.

(4) Countervailing duty investigations conducted on an aggregate basis and requests for exclusion from countervailing duties—
duty order. Where the Secretary conducts a countervailing duty investigation on an aggregate basis under section 777A(e)(2)(B) of the Act, the Secretary will consider and investigate requests for exclusion to the extent practicable. An exporter or producer that desires exclusion from an order must submit:

(i) A certification by the exporter or producer that it received zero or de minimis net countervailable subsidies during the period of investigation;

(ii) If the exporter or producer received a countervailable subsidy, calculations demonstrating that the amount of net countervailable subsidies received was de minimis during the period of investigation;

(iii) If the exporter is not the producer of the subject merchandise, certifications from the suppliers and producers of the subject merchandise that those persons received zero or de minimis net countervailable subsidies during the period of investigation; and

(iv) A certification from the government of the affected country that the government did not provide the exporter (or the exporter’s supplier) or producer with more than de minimis net countervailable subsidies during the period of investigation.

§ 351.205 Preliminary determination.

(a) Introduction. A preliminary determination in an antidumping or countervailing duty investigation constitutes the first point at which the Secretary may provide a remedy (sometimes referred to as “provisional measures”) if the Secretary preliminarily finds that dumping or countervailable subsidization has occurred. Whether the Secretary’s preliminary determination is affirmative or negative, the investigation continues. This section contains rules regarding deadlines for preliminary determinations, postponement of preliminary determinations, notices of preliminary determinations, and the effects of affirmative preliminary determinations.

(b) Deadline for preliminary determination. The deadline for a preliminary determination under section 703(b) or section 733(b) of the Act will be:

(1) Normally not later than 140 days in an antidumping investigation (65 days in a countervailing duty investigation) after the date on which the Secretary initiated the investigation (see section 703(b)(1) or section 733(b)(1)(A) of the Act);

(2) Not later than 190 days in an antidumping investigation (130 days in a countervailing duty investigation) after the date on which the Secretary initiated the investigation if the Secretary postpones the preliminary determination at petitioner’s request or because the Secretary determines that the investigation is extraordinarily complicated (see section 703(c)(1) or section 733(c)(1) of the Act);

(3) In a countervailing duty investigation, not later than 250 days after the date on which the proceeding began if the Secretary postpones the preliminary determination due to an upstream subsidy allegation (up to 310 days if the Secretary also postponed the preliminary determination at the request of the petitioner or because the Secretary determined that the investigation is extraordinarily complicated) (see section 703(c)(1) and section 703(g)(1) of the Act);

(4) Within 90 days after initiation in an antidumping investigation, and on an expedited basis in a countervailing duty investigation, where verification has been waived (see section 703(b)(3) or section 733(b)(2) of the Act);

(5) In a countervailing duty investigation, on an expedited basis and within 65 days after the date on which the Secretary initiated the investigation if the sole subsidy alleged in the petition was the derogation of an international undertaking on official export credits (see section 702(b)(3) and section 703(b)(2) of the Act);

(6) In a countervailing duty investigation, not later than 60 days after the date on which the Secretary initiated the investigation if the only subsidy under investigation is a subsidy with respect to which the Secretary received notice from the United States Trade Representative of a violation of Article 8 of the Subsidies Agreement (see section 703(b)(5) of the Act); and
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§ 351.206 Critical circumstances.

(a) Introduction. Generally, antidumping or countervailing duties are imposed on entries of merchandise made on or after the date on which the Secretary first imposes provisional measures (most often the date on which notice of an affirmative preliminary determination is published in the Federal Register). However, if the Secretary finds that “critical circumstances” exist, duties may be imposed retroactively on merchandise entered up to 90 days before the imposition of provisional measures. This section contains procedural and substantive rules regarding allegations and findings of critical circumstances.

(b) In general. If a petitioner submits to the Secretary a written allegation of critical circumstances, with reasonably available factual information supporting the allegation, 21 days or more before the scheduled date of the Secretary’s final determination, or on the Secretary’s own initiative in a self-initiated investigation, the Secretary will make a finding whether critical circumstances exist, as defined in section 705(a)(2) or section 735(a)(3) of the Act (whichever is applicable).

(c) Preliminary finding. (1) If the petitioner submits an allegation of critical circumstances 30 days or more before the scheduled date of the Secretary’s
§ 351.207 Termination of investigation.

(a) Introduction. “Termination” is a term of art that refers to the end of an antidumping or countervailing duty proceeding in which an order has not yet been issued. The Act establishes a variety of mechanisms by which an investigation may be terminated, most of which are dealt with in this section. For rules regarding the termination of a suspended investigation following a review under section 751 of the Act, see §351.222.

(b) Suspension of liquidation. (1) In determining whether imports of the subject merchandise have been massive under section 705(a)(2)(B) or section 735(a)(3)(B) of the Act, the Secretary normally will examine:

(i) The volume and value of the imports;

(ii) Seasonal trends; and

(iii) The share of domestic consumption accounted for by the imports.

(2) In general, unless the imports during the “relatively short period” (see paragraph (i) of this section) have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.

(c) Relatively short period. Under section 705(a)(2)(B) or section 735(a)(3)(B) of the Act, the Secretary normally will consider a “relatively short period” as the period beginning on the date the proceeding begins and ending at least three months later. However, if the Secretary finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a period of not less than three months from that earlier time.

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

(e) Final finding. For any allegation of critical circumstances submitted 21 days or more before the scheduled date of the Secretary’s final determination, the Secretary will make a final finding on critical circumstances, and will take appropriate action under section 705(c)(4) or section 735(c)(4) of the Act (whichever is applicable).

(f) Findings in self-initiated investigations. In a self-initiated investigation, the Secretary will make preliminary and final findings on critical circumstances without regard to the time limits in paragraphs (c) and (e) of this section.

(g) Information regarding critical circumstances. The Secretary may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise if, at any time after the initiation of an investigation, the Secretary makes the findings described in section 702(e) or section 732(e) of the Act (whichever is applicable) regarding the possible existence of critical circumstances.

(2) The Secretary will issue the preliminary finding:

(i) Not later than the preliminary determination, if the allegation is submitted 20 days or more before the scheduled date of the preliminary determination; or

(ii) Within 30 days after the petitioner submits the allegation, if the allegation is submitted later than 20 days before the scheduled date of the preliminary determination; or

(iii) If, pursuant to paragraph (i) of this section, the period examined for purposes of determining whether critical circumstances exists is earlier than normal, the Secretary will issue the preliminary finding as early as possible after initiation of the investigation, but normally not less than 45 days after the petition was filed. The Secretary will notify the Commission and publish in the Federal Register notice of the preliminary finding.

(h) Massive imports. (1) In determining whether imports of the subject merchandise have been massive under section 705(a)(2)(B) or section 735(a)(3)(B) of the Act, the Secretary normally will examine:

(i) The volume and value of the imports;

(ii) Seasonal trends; and

(iii) The share of domestic consumption accounted for by the imports.

(2) In general, unless the imports during the “relatively short period” (see paragraph (i) of this section) have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.

(3) Relatively short period. Under section 705(a)(2)(B) or section 735(a)(3)(B) of the Act, the Secretary normally will consider a “relatively short period” as the period beginning on the date the proceeding begins and ending at least three months later. However, if the Secretary finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a period of not less than three months from that earlier time.

§ 351.208 Suspension of investigation.

(a) Introduction. In addition to the imposition of duties, the Act also permits the Secretary to suspend an antidumping or countervailing duty investigation by accepting a suspension agreement (referred to in the WTO Agreements as an “undertaking”). Briefly, in a suspension agreement, the exporters and producers or the foreign government agree to modify their behavior so as to eliminate dumping or subsidization or the injury caused thereby. If the Secretary accepts a suspension agreement, the Secretary will “suspend” the investigation and thereafter will monitor compliance with the agreement. This section contains rules for entering into suspension agreements and procedures for suspending an investigation.

(b) In general. The Secretary may suspend an investigation under section 704 or section 734 of the Act and this section.

(c) Definition of “substantially all.” Under section 704 and section 734 of the Act, exporters that account for “substantially all” of the merchandise means exporters and producers that have accounted for not less than 85 percent by value or volume of the subject merchandise during the period for which the Secretary is measuring dumping or countervailable subsidization in the investigation or such other period that the Secretary considers representative.

(d) Monitoring. In monitoring a suspension agreement under section 704(c), section 734(c), or section 734(l) of the Act (agreements to eliminate injurious effects or to restrict the volume of imports), the Secretary will not be obliged to ascertain on a continuing basis the prices in the United States of the subject merchandise or of domestic like products.
(e) Exports not to increase during interim period. The Secretary will not accept a suspension agreement under section 704(b)(2) or section 734(b)(1) of the Act (the cessation of exports) unless the agreement ensures that the quantity of the subject merchandise exported during the interim period set forth in the agreement does not exceed the quantity of the merchandise exported during a period of comparable duration that the Secretary considers representative.

(f) Procedure for suspension of investigation—(1) Submission of proposed suspension agreement—(i) In general. As appropriate, the exporters and producers or, in an antidumping investigation involving a nonmarket economy country or a countervailing duty investigation, the government, must submit to the Secretary a proposed suspension agreement within:

(A) In an antidumping investigation, 15 days after the date of issuance of the preliminary determination, or

(B) In a countervailing duty investigation, 7 days after the date of issuance of the preliminary determination.

(ii) Postponement of final determination. Where a proposed suspension agreement is submitted in an antidumping investigation, an exporter or producer or, in an investigation involving a nonmarket economy country, the government, may request postponement of the final determination under section 735(a)(2) of the Act (see §351.210(e)). Where the final determination in a countervailing duty investigation is postponed under section 703(g)(2) or section 705(a)(1) of the Act (see §351.210(b)(3) and §351.210(i)), the time limits in paragraphs (f)(1)(i), (f)(2)(i), (f)(3), and (g)(1) of this section applicable to countervailing duty investigations will be extended to coincide with the time limits in such paragraphs applicable to antidumping investigations.

(iii) Special rule for regional industry determination. If the Commission makes a regional industry determination in its final affirmative determination under section 705(b) or section 735(b) of the Act but not in its preliminary affirmative determination under section 703(a) or section 733(a) of the Act, the Secretary, within 15 days of the submission of a proposed suspension agreement under paragraph (f)(1)(iii) of this section, will notify all parties to the proceeding of the proposed suspension agreement and provide to the petitioner a copy of the agreement (such agreement must contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of section 704 or section 734 of the Act);

and

(ii) Consultation. The Secretary will consult with the petitioner concerning the proposed suspension of the investigation.

(2) Notification and consultation. In fulfilling the requirements of section 704 or section 734 of the Act (whichever is applicable), the Secretary will take the following actions:

(i) In general. The Secretary will notify all parties to the proceeding of the proposed suspension of an investigation and provide to the petitioner a copy of the suspension agreement preliminarily accepted by the Secretary (the agreement must contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of section 704 or section 734 of the Act) within:

(A) In an antidumping investigation, 30 days after the date of issuance of the preliminary determination, or

(B) In a countervailing duty investigation, 15 days after the date of issuance of the preliminary determination.

(ii) Special rule for regional industry determination. If the Commission makes a regional industry determination in its final affirmative determination under section 705(b) or section 735(b) of the Act but not in its preliminary affirmative determination under section 703(a) or section 733(a) of the Act, the Secretary, within 15 days of the submission of a proposed suspension agreement under paragraph (f)(1)(iii) of this section, will notify all parties to the proceeding of the proposed suspension agreement and provide to the petitioner a copy of the agreement preliminarily accepted by the Secretary (such agreement must contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of section 704 or section 734 of the Act); and

(iii) Consultation. The Secretary will consult with the petitioner concerning the proposed suspension of the investigation.
(3) Opportunity for comment. The Secretary will provide all interested parties, an industrial user of the subject merchandise or a representative consumer organization, as described in section 777(h) of the Act, and United States government agencies an opportunity to submit written argument and factual information concerning the proposed suspension of the investigation within:

(i) In an antidumping investigation, 50 days after the date of issuance of the preliminary determination,

(ii) In a countervailing duty investigation, 35 days after the date of issuance of the preliminary determination, or

(iii) In a regional industry case described in paragraph (f)(1)(iii) of this section, 35 days after the date of issuance of an order.

(g) Acceptance of suspension agreement. (1) The Secretary may accept an agreement to suspend an investigation within:

(i) In an antidumping investigation, 60 days after the date of issuance of the preliminary determination,

(ii) In a countervailing duty investigation, 45 days after the date of issuance of the preliminary determination, or

(iii) In a regional industry case described in paragraph (f)(1)(iii) of this section, 45 days after the date of issuance of an order.

(2) If the Secretary accepts an agreement, the Secretary will take the actions described in section 704(f), section 704(m)(3), section 734(f), or section 734(l)(3) of the Act (whichever is applicable), and will publish in the Federal Register notice of “Suspension of Antidumping (Countervailing Duty) Investigation,” including the text of the agreement.

(h) Merchandise imported in excess of allowed quantity. (1) The Secretary may instruct the Customs Service not to accept entries, or withdrawals from warehouse, for consumption of subject merchandise in excess of any quantity allowed by a suspension agreement under section 704 or section 734 of the Act, including any quantity allowed during the interim period (see paragraph (e) of this section).

(2) Imports in excess of the quantity allowed by a suspension agreement, including any quantity allowed during the interim period (see paragraph (e) of this section), may be exported or destroyed under Customs Service supervision, except that if the agreement is under section 704(c)(3) or section 734(l) of the Act (restrictions on the volume of imports), the excess merchandise, with the approval of the Secretary, may be held for future opening under the agreement by placing it in a foreign trade zone or by entering it for warehouse.

§351.209 Violation of suspension agreement.

(a) Introduction. A suspension agreement remains in effect until the underlying investigation is terminated (see §§351.207 and 351.222). However, if the Secretary finds that a suspension agreement has been violated or no longer meets the requirements of the Act, the Secretary may either cancel or revise the agreement. This section contains rules regarding cancellation and revision of suspension agreements.

(b) Immediate determination. If the Secretary determines that a signatory
has violated a suspension agreement, the Secretary, without providing interested parties an opportunity to comment, will:

(1) Order the suspension of liquidation in accordance with section 704(i)(1)(A) or section 734(i)(1)(A) of the Act (whichever is applicable) of all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of:

(i) 90 days before the date of publication of the notice of cancellation of the agreement; or

(ii) The date of first entry, or withdrawal from warehouse, for consumption of the merchandise the sale or export of which was in violation of the agreement;

(2) If the investigation was not completed under section 704(g) or section 734(g) of the Act, resume the investigation as if the Secretary had made an affirmative preliminary determination on the date of publication of the notice of cancellation and impose provisional measures by instructing the Customs Service to require for each entry of the subject merchandise suspended under paragraph (b)(1) of this section a cash deposit or bond at the rates determined in the affirmative preliminary determination;

(3) If the investigation was completed under section 704(g) or section 734(g) of the Act, issue an antidumping or countervailing duty order (whichever is applicable) and, for all entries subject to suspension of liquidation under paragraph (b)(1) of this section, instruct the Customs Service to require for each entry of the merchandise suspended under this paragraph a cash deposit at the rates determined in the affirmative final determination;

(4) Notify all persons who are or were parties to the proceeding, the Commission, and, if the Secretary determines that the violation was intentional, the Commissioner of Customs; and

(5) Publish in the Federal Register notice of “Antidumping (Countervailing Duty) Order (Resumption of Antidumping (Countervailing Duty) Investigation); Cancellation of Suspension Agreement.”

(c) Determination after notice and comment. (1) If the Secretary has reason to believe that a signatory has violated a suspension agreement, or that an agreement no longer meets the requirements of section 704(d)(1) or section 734(d) of the Act, but the Secretary does not have sufficient information to determine that a signatory has violated the agreement (see paragraph (b) of this section), the Secretary will publish in the Federal Register notice of “Invitation for Comment on Antidumping (Countervailing Duty) Suspension Agreement.”

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

(i) Determine whether any signatory has violated the suspension agreement; or

(ii) Determine whether the suspension agreement no longer meets the requirements of section 704(d)(1) or section 734(d) of the Act.

(3) If the Secretary determines that a signatory has violated the suspension agreement, the Secretary will take appropriate action as described in paragraphs (b)(1) through (b)(5) of this section.

(4) If the Secretary determines that a suspension agreement no longer meets the requirements of section 704(d)(1) or section 734(d) of the Act, the Secretary will:

(i) Take appropriate action as described in paragraphs (b)(1) through (b)(5) of this section; except that, under paragraph (b)(1)(ii) of this section, the Secretary will order the suspension of liquidation of all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of:

(A) 90 days before the date of publication of the notice of suspension of liquidation; or

(B) The date of first entry, or withdrawal from warehouse, for consumption of the merchandise the sale or export of which does not meet the requirements of section 704(d)(1) of the Act;

(ii) Continue the suspension of investigation by accepting a revised suspension agreement under section 704(b) or section 734(b) of the Act (whether or not the Secretary accepted the original agreement under such section) that, at
the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) or section 734(d) of the Act, and publish in the FEDERAL REGISTER notice of “Revision of Agreement Suspending Antidumping (Countervailing Duty) Investigation”; or

(iii) Continue the suspension of investigation by accepting a revised suspension agreement under section 704(c), section 734(c), or section 734(1) of the Act (whether or not the Secretary accepted the original agreement under such section) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) or section 734(d) of the Act, and publish in the FEDERAL REGISTER notice of “Revision of Agreement Suspending Antidumping (Countervailing Duty) Investigation.” If the Secretary continues to suspend an investigation based on a revised agreement accepted under section 704(c), section 734(c), or section 734(1) of the Act, the Secretary will order suspension of liquidation to begin. The suspension will not end until the Commission completes any requested review of the revised agreement under section 704(h) or section 734(h) of the Act. If the Commission receives no request for review within 20 days after the date of publication of the notice of the revision, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication, and will instruct the Customs Service to release any cash deposit or bond. If the Commission undertakes a review under section 704(h) or section 734(h) of the Act, the provisions of sections 704(h)(2) and (3) and sections 734(h)(2) and (3) of the Act will apply.

(5) If the Secretary decides neither to consider the suspension agreement violated nor to revise the agreement, the Secretary will publish in the FEDERAL REGISTER notice of the Secretary’s decision under paragraph (c)(2) of this section, including a statement of the factual and legal conclusions on which the decision is based.

(d) Additional signatories. If the Secretary decides that a suspension agreement no longer will completely eliminate the injurious effect of exports to the United States of subject merchandise under section 704(c)(1) or section 734(c)(1) of the Act, or that the signatory exporters no longer account for substantially all of the subject merchandise, the Secretary may revise the agreement to include additional signatory exporters.

(e) Definition of “violation.” Under this section, “violation” means non-compliance with the terms of a suspension agreement caused by an act or omission of a signatory, except, at the discretion of the Secretary, an act or omission which is inadvertent or inconsequential.

§ 351.210 Final determination.

(a) Introduction. A “final determination” in an antidumping or countervailing duty investigation constitutes a final decision by the Secretary as to whether dumping or countervailing subsidization is occurring. If the Secretary’s final determination is affirmative, in most instances the Commission will issue a final injury determination (except in certain countervailing duty investigations). Also, if the Secretary’s preliminary determination was negative but the final determination is affirmative, the Secretary will impose provisional measures. If the Secretary’s final determination is negative, the proceeding, including the injury investigation conducted by the Commission, terminates. This section contains rules regarding deadlines for, and postponement of, final determinations, contents of final determinations, and the effects of final determinations.

(b) Deadline for final determination.

The deadline for a final determination under section 705(a)(1) or section 735(a)(1) of the Act will be:

(1) Normally, not later than 75 days after the date of the Secretary’s preliminary determination (see section 705(a)(1) or section 735(a)(1) of the Act);

(2) In an antidumping investigation, not later than 135 days after the date of publication of the preliminary determination if the Secretary postpones the final determination at the request of:

(i) The petitioner, if the preliminary determination was negative (see section 735(a)(2)(B) of the Act); or

(ii) Exporters or producers who account for a significant proportion of
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exports of the subject merchandise, if the preliminary determination was affirmative (see section 735(a)(2)(A) of the Act);

(3) In a countervailing duty investigation, not later than 165 days after the preliminary determination, if, after the preliminary determination, the Secretary decides to investigate an upstream subsidy allegation and concludes that additional time is needed to investigate the allegation (see section 703(g)(2) of the Act); or

(4) In a countervailing duty investigation, the same date as the date of the final antidumping determination, if:

(i) In a situation where the Secretary simultaneously initiated antidumping and countervailing duty investigations on the subject merchandise (from the same or other countries), the petitioner requests that the final countervailing duty determination be postponed to the date of the final antidumping determination; and

(ii) If the final countervailing duty determination is not due on a later date because of postponement due to an allegation of upstream subsidies under section 703(g)(1) of the Act (see section 705(a)(1) of the Act).

(c) Contents of final determination and publication of notice. The final determination will include, if appropriate, a final finding on critical circumstances under section 705(a)(2) or section 735(a)(3) of the Act (whichever is applicable). The Secretary will publish in the FEDERAL REGISTER notice of “Affirmative (Negative) Final Antidumping (Countervailing Duty) Determination,” including the rates, if any.

(d) Effect of affirmative final determination. If the final determination is affirmative, the Secretary will take the actions described in section 705(c)(1) or section 735(c)(1) of the Act (whichever is applicable). In addition, in the case of a countervailing duty investigation involving subject merchandise from a country that is not a Subsidies Agreement country, the Secretary will instruct the Customs Service to require a cash deposit, as provided in section 706(a)(3) of the Act, for each entry of the subject merchandise entered, withdrawn from warehouse, for consumption on or after the date of publication of the order under section 706(a) of the Act.

(e) Request for postponement of final antidumping determination—(1) In general. A request to postpone a final antidumping determination under section 735(a)(2) of the Act (see paragraph (b)(2) of this section) must be submitted in writing within the scheduled date of the final determination. The Secretary may grant the request, unless the Secretary finds compelling reasons to deny the request.

(2) Requests by exporters. In the case of a request submitted under paragraph (e)(1) of this section by exporters who account for a significant proportion of exports of subject merchandise (see section 735(a)(2)(A) of the Act), the Secretary will not grant the request unless those exporters also submit a request described in the last sentence of section 733(d) of the Act (extension of provisional measures from a 4-month period to not more than 6 months).

(f) Deferral of decision concerning upstream subsidization to review. Notwithstanding paragraph (b)(3) of this section, if the petitioner so requests in writing and the preliminary countervailing duty determination was affirmative, the Secretary, instead of postponing the final determination, may defer a decision concerning upstream subsidization until the conclusion of the first administrative review of a countervailing duty order, if any (see section 703(g)(2)(B)(1) of the Act).

(g) Notification of postponement. If the Secretary postpones a final determination under paragraph (b)(2), (b)(3), or (b)(4) of this section, the Secretary will notify promptly all parties to the proceeding of the postponement, and publish in the FEDERAL REGISTER notice of “Postponement of Final Antidumping (Countervailing Duty) Determination,” stating the reasons for the postponement.

(h) Termination of suspension of liquidation in a countervailing duty investigation. If the Secretary postpones a final countervailing duty determination, the Secretary will end any suspension of liquidation ordered in the preliminary determination not later than 120 days after the date of publication of the preliminary determination, and will not resume it unless and until
§ 351.212 Assessment of antidumping and countervailing duties; provisional measures deposit cap; interest on certain overpayments and underpayments.

(a) Introduction. Unlike the systems of some other countries, the United States uses a “retrospective” assessment system under which final liability for antidumping and countervailing duties is determined after merchandise is imported. Generally, the amount of

§ 351.211 Antidumping order and countervailing duty order.

(a) Introduction. The Secretary issues an order when both the Secretary and the Commission (except in certain countervailing duty investigations) have made final affirmative determinations. The issuance of an order ends the investigative phase of a proceeding. Generally, upon the issuance of an order, importers no longer may post bonds as security for antidumping or countervailing duties, but instead must make a cash deposit of estimated duties. An order remains in effect until it is revoked. This section contains rules regarding the issuance of orders in general, as well as special rules for orders where the Commission has found a regional industry to exist.

(b) In general. Not later than seven days after receipt of notice of an affirmative final injury determination by the Commission under section 705(b) or section 735(b) of the Act, or, in a countervailing duty proceeding involving subject merchandise from a country not entitled to an injury test (see §351.101(b)), simultaneously with publication of an affirmative final countervailing duty determination by the Secretary, the Secretary will publish in the FEDERAL REGISTER an “Antidumping Order” or “Countervailing Duty Order” that:

(1) Instructs the Customs Service to assess antidumping duties or countervailing duties (whichever is applicable) on the subject merchandise, in accordance with the Secretary’s instructions at the completion of each review requested under §351.213(b) (administrative review), §351.214(b) (new shipper review), or §351.215(b) (expedited antidumping review), or if a review is not requested, in accordance with the Secretary’s assessment instructions under §351.212(c);

(2) Instructs the Customs Service to require a cash deposit of estimated antidumping or countervailing duties at the rates included in the Secretary’s final determination; and

(3) Orders the suspension of liquidation ended for all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission’s final determination, and instructs the Customs Service to release the cash deposit or bond on those entries, if in its final determination, the Commission found a threat of material injury or material retardation of the establishment of an industry, unless the Commission in its final determination also found that, absent the suspension of liquidation ordered under section 703(d)(2) or section 733(d)(2) of the Act, it would have found material injury (see section 706(b) or section 736(b) of the Act).

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§ 351.212 Assessment of antidumping and countervailing duties; provisional measures deposit cap; interest on certain overpayments and underpayments.

(a) Introduction. Unlike the systems of some other countries, the United States uses a “retrospective” assessment system under which final liability for antidumping and countervailing duties is determined after merchandise is imported. Generally, the amount of
duties to be assessed is determined in a review of the order covering a discrete period of time. If a review is not requested, duties are assessed at the rate established in the completed review covering the most recent prior period or, if no review has been completed, the cash deposit rate applicable at the time merchandise was entered. This section contains rules regarding the assessment of duties, the provisional measures deposit cap, and interest on over- or undercollections of estimated duties.

(b) Assessment of antidumping and countervailing duties as the result of a review—(1) Antidumping duties. If the Secretary has conducted a review of an antidumping order under §351.213 (administrative review), §351.214 (new shipper review), or §351.215 (expedited antidumping review), the Secretary normally will calculate an assessment rate for each importer of subject merchandise covered by the review. The Secretary normally will calculate the assessment rate by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise for normal customs duty purposes. The Secretary then will instruct the Customs Service to assess antidumping duties by applying the assessment rate to the entered value of the merchandise.

(2) Countervailing duties. If the Secretary has conducted a review of a countervailing duty order under §351.213 (administrative review) or §351.214 (new shipper review), the Secretary normally will instruct the Customs Service to assess countervailing duties by applying the assessment rate to the entered value of the merchandise.

(c) Automatic assessment of antidumping and countervailing duties if no review is requested. (1) If the Secretary does not receive a timely request for an administrative review of an order (see paragraph (b)(1), (b)(2), or (b)(3) of §351.213), the Secretary, without additional notice, will instruct the Customs Service to:

(i) Assess antidumping duties or countervailing duties, as the case may be, on the subject merchandise described in §351.213(e) at rates equal to the cash deposit of, or bond for, estimated antidumping duties or countervailing duties required on that merchandise at the time of entry, or withdrawal from warehouse, for consumption; and

(ii) To continue to collect the cash deposits previously ordered.

(2) If the Secretary receives a timely request for an administrative review of an order (see paragraph (b)(1), (b)(2), or (b)(3) of §351.213), the Secretary will instruct the Customs Service to assess antidumping duties or countervailing duties, and to continue to collect cash deposits, on the merchandise not covered by the request in accordance with paragraph (c)(1) of this section.

(3) The automatic assessment provisions of paragraphs (c)(1) and (c)(2) of this section will not apply to subject merchandise that is the subject of a new shipper review (see §351.214) or an expedited antidumping review (see §351.215).

(d) Provisional measures deposit cap. This paragraph applies to subject merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission’s notice of an affirmative final injury determination or, in a countervailing duty proceeding that involves merchandise from a country that is not entitled to an injury test, the date of the Secretary’s notice of an affirmative final countervailing duty determination. If the amount of duties that would be assessed by applying the rates included in the Secretary’s affirmative preliminary or affirmative final antidumping or countervailing duty determination (“provisional duties”) is different from the amount of duties that would be assessed by applying the assessment rate under paragraphs (b)(1) and (b)(2) of this section (“final duties”), the Secretary will instruct the Customs Service to disregard the difference to the extent that the provisional duties are less than the final duties, and to assess antidumping or countervailing duties at the assessment rate if the provisional duties exceed the final duties.

(e) Interest on certain overpayments and underpayments. Under section 778 of the Act, the Secretary will instruct the Customs Service to calculate interest
for each entry on or after the publication of the order from the date that a cash deposit is required to be deposited for the entry through the date of liquidation of the entry.

(1) Special rule for regional industry cases—(1) In general. If the Commission, in its final injury determination, found a regional industry under section 771(4)(C) of the Act, the Secretary may direct that duties not be assessed on subject merchandise of a particular exporter or producer if the Secretary determines that:

(i) The exporter or producer did not export subject merchandise for sale in the region concerned during or after the Department’s period of investigation;

(ii) The exporter or producer has certified that it will not export subject merchandise for sale in the region concerned in the future so long as the antidumping or countervailing duty order is in effect; and

(iii) No subject merchandise of the exporter or producer was entered into the United States outside of the region and then sold into the region during or after the Department’s period of investigation.

(2) Procedures for obtaining an exception from the assessment of duties—(1) Request for exception. An exporter or producer seeking an exception from the assessment of duties under paragraph (f)(1) of this section must request, subject to the provisions of §351.213 or §351.214, an administrative review or a new shipper review to determine whether subject merchandise of the exporter or producer in question should be excepted from the assessment of duties under paragraph (f)(1) of this section. The request for a review must be accompanied by:

(A) A certification by the exporter or producer that it did not export subject merchandise for sale in the region concerned during or after the Department’s period of investigation, and that it will not do so in the future so long as the antidumping or countervailing duty order is in effect; and

(B) A certification from each of the exporter’s or producer’s U.S. importers of the subject merchandise that no subject merchandise of that exporter or producer was entered into the United States outside such region and then sold into the region during or after the Department’s period of investigation.

(ii) Limited review. If the Secretary initiates an administrative review or a new shipper review based on a request for review that includes a request for an exception from the assessment of duties under paragraph (f)(2)(i) of this section, the Secretary, if requested, may limit the review to a determination as to whether an exception from the assessment of duties should be granted under paragraph (f)(1) of this section.

(3) Exception granted. If, in the final results of the administrative review or the new shipper review, the Secretary determines that the requirements of paragraph (f)(1) of this section are satisfied, the Secretary will instruct the Customs Service to liquidate, without regard to antidumping or countervailing duties (whichever is appropriate), entries of subject merchandise of the exporter or producer concerned.

(4) Exception not granted. If, in the final results of the administrative review or the new shipper review, the Secretary determines that the requirements of paragraph (f)(1) of this section are not satisfied, the Secretary:

(i) Will issue assessment instructions to the Customs Service in accordance with paragraph (b) of this section; or

(ii) If the review was limited to a determination as to whether an exception from the assessment of duties should be granted, the Secretary will instruct the Customs Service to assess duties in accordance with paragraph (f)(1) or (f)(2) of this section, whichever is appropriate (automatic assessment if no review is requested).
determined after merchandise is imported. Although duty liability may be determined in the context of other types of reviews, the most frequently used procedure for determining final duty liability is the administrative review procedure under section 751(a)(1) of the Act. This section contains rules regarding requests for administrative reviews and the conduct of such reviews.

(b) Request for administrative review. (1) Each year during the anniversary month of the publication of an antidumping or countervailing duty order, a domestic interested party or an interested party described in section 771(9)(B) of the Act (foreign government) may request in writing that the Secretary conduct an administrative review under section 751(a)(1) of the Act of specified individual exporters or producers covered by an order (except for a countervailing duty order in which the investigation or prior administrative review was conducted on an aggregate basis), if the requesting person states why the person desires the Secretary to review those particular exporters or producers.

(2) During the same month, an exporter or producer covered by an order (except for a countervailing duty order in which the investigation or prior administrative review was conducted on an aggregate basis) may request in writing that the Secretary conduct an administrative review of only that person.

(3) During the same month, an importer of the merchandise may request in writing that the Secretary conduct an administrative review of only an exporter or producer (except for a countervailing duty order in which the investigation or prior administrative review was conducted on an aggregate basis), if the requesting person states why the person desires the Secretary to review the specific exporter or producer.

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

(c) Deferral of administrative review—
(1) In general. The Secretary may defer the initiation of an administrative review, in whole or in part, for one year if:

   (i) The request for administrative review is accompanied by a request that the Secretary defer the review, in whole or in part; and

   (ii) None of the following persons objects to the deferral: the exporter or producer for which deferral is requested, an importer of subject merchandise of that exporter or producer, a domestic interested party and, in a countervailing duty proceeding, the foreign government.

(2) Timeliness of objection to deferral. An objection to a deferral of the initiation of administrative review under paragraph (c)(1)(ii) of this section must be submitted within 15 days after the end of the anniversary month in which the administrative review is requested.

(3) Procedures and deadlines. If the Secretary defers the initiation of an administrative review, the Secretary will publish notice of the deferral in the Federal Register. The Secretary will initiate the administrative review in the month immediately following the next anniversary month, and the deadline for issuing preliminary results of review (see paragraph (h)(1) of this section) and submitting factual information (see §351.302(b)(2)) will run from the last day of the next anniversary month.

(d) Rescission of administrative review—
(1) Withdrawal of request for review. The Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so.

(2) Self-initiated review. The Secretary may rescind an administrative review that was self-initiated by the Secretary.

(3) No shipments. The Secretary may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be.
(4) Notice of rescission. If the Secretary rescinds an administrative review (in whole or in part), the Secretary will publish in the Federal Register notice of “Rescission of Antidumping (Countervailing Duty) Administrative Review” or, if appropriate, “Partial Rescission of Antidumping (Countervailing Duty) Administrative Review.”

(e) Period of review—(1) Antidumping proceedings. (i) Except as provided in paragraph (e)(1)(ii) of this section, an administrative review under this section normally will cover, as appropriate, entries, exports, or sales of the subject merchandise during the 12 months immediately preceding the most recent anniversary month.

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

(2) Countervailing duty proceedings. (i) Except as provided in paragraph (e)(2)(ii) of this section, an administrative review under this section normally will cover entries or exports of the subject merchandise during the most recently completed calendar year. If the review is conducted on an aggregate basis, the Secretary normally will cover entries or exports of the subject merchandise during the most recently completed fiscal year for the government in question.

(ii) For requests received during the first anniversary month after publication of an order or suspension of investigation, an administrative review under this section will cover entries or exports, as appropriate, during the period from the date of suspension of liquidation under this part or suspension of investigation to the end of the most recently completed calendar or fiscal year as described in paragraph (e)(2)(i) of this section.

(g) Procedures. The Secretary will conduct an administrative review under this section in accordance with §351.221.

(h) Time limits—(1) In general. The Secretary will issue preliminary results of review (see §351.221(b)(4)) within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and final results of review (see §351.221(b)(5)) within 120 days after the date on which notice of the preliminary results was published in the Federal Register.

(2) Exception. If the Secretary determines that it is not practicable to complete the review within the time specified in paragraph (h)(1) of this section, the Secretary may extend the 245-day period to 365 days and may extend the 120-day period to 180 days. If the Secretary does not extend the time for issuing preliminary results, the Secretary may extend the time for issuing final results from 120 days to 300 days.

(i) Possible cancellation or revision of suspension agreement. If during an administrative review the Secretary determines or has reason to believe that a signatory has violated a suspension agreement or that the agreement no longer meets the requirements of section 704 or section 734 of the Act (whichever is applicable), the Secretary will take appropriate action under section 704(i) or section 734(i) of the Act and §351.209. The Secretary may suspend the time limit in paragraph (h) of this section while taking action under §351.209.

(j) Absorption of antidumping duties. (1) During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping order under §351.211, or a determination under §351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject
merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

(2) For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998.

(3) In determining under paragraph (j)(1) of this section whether antidumping duties have been absorbed, the Secretary will examine the antidumping duties calculated in the administrative review in which the absorption inquiry is requested.

(4) The Secretary will notify the Commission of the Secretary’s determination if:

(i) In the case of an administrative review other than one to which paragraph (j)(2) of this section applies, the administrative review covers all or part of a time period falling between the third and fourth anniversary month of an order; or

(ii) In the case of an administrative review to which paragraph (j)(2) of this section applies, the Secretary initiated the administrative review in 1998.

(k) Administrative reviews of countervailing duty orders conducted on an aggregate basis—(1) Request for zero rate. Where the Secretary conducts an administrative review of a countervailing duty on an aggregate basis under section 777A(e)(2)(B) of the Act, the Secretary will consider and review requests for individual assessment and cash deposit rates of zero to the extent practicable. An exporter or producer that desires a zero rate must submit:

(i) A certification by the exporter or producer that it received zero or de minimis net countervailable subsidies during the period of review;

(ii) If the exporter or producer received a countervailable subsidy, calculations demonstrating that the amount of net countervailable subsidies received was de minimis during the period of review;

(iii) If the exporter is not the producer of the subject merchandise, certifications from the suppliers and producers of the subject merchandise that those persons received zero or de minimis net countervailable subsidies during the period of review; and

(iv) A certification from the government of the affected country that the government did not provide the exporter (or the exporter’s supplier) or producer with more than de minimis net countervailable subsidies during the period of review.

(2) Application of country-wide subsidy rate. With the exception of assessment and cash deposit rates of zero determined under paragraph (k)(1) of this section, if, in the final results of an administrative review under this section of a countervailing duty order, the Secretary calculates a single country-wide subsidy rate under section 777A(e)(2)(B) of the Act, that rate will supersede, for cash deposit purposes, all rates previously determined in the countervailing duty proceeding in question.

(l) Exception from assessment in regional industry cases. For procedures relating to a request for the exception from the assessment of antidumping or countervailing duties in a regional industry case, see §351.212(f).

§351.214 New shipper reviews under section 751(a)(2)(B) of the Act.

(a) Introduction. The URAA established a new procedure by which so-called “new shippers” can obtain their own individual dumping margin or countervailable subsidy rate on an expedited basis. In general, a new shipper is an exporter or producer that did not export, and is not affiliated with an exporter or producer that did export, to the United States during the period of investigation. This section contains rules regarding requests for new shipper reviews and procedures for conducting such reviews. In addition, this section contains rules regarding requests for expedited reviews by non-investigated exporters in certain countervailing duty proceedings and procedures for conducting such reviews.

(b) Request for new shipper review—(1) Requirement of sale or export. Subject to the requirements of section 751(a)(2)(B) of the Act and this section, an exporter or producer may request a new shipper review if it has exported, or sold for export, subject merchandise to the United States.
(2) Contents of request. A request for a new shipper review must contain the following:

(i) If the person requesting the review is both the exporter and producer of the merchandise, a certification that the person requesting the review did not export subject merchandise to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation;

(ii) If the person requesting the review is the exporter, but not the producer, of the subject merchandise:
(A) The certification described in paragraph (b)(2)(i) of this section; and
(B) A certification from the person that produced or supplied the subject merchandise to the person requesting the review that that producer or supplier did not export the subject merchandise to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation;

(iii)(A) A certification that, since the investigation was initiated, such exporter or producer has never been affiliated with any exporter or producer who exported the subject merchandise to the United States (or in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation;
(B) In an antidumping proceeding involving imports from a nonmarket economy country, a certification that the export activities of such exporter or producer are not controlled by the central government;

(iv) Documentation establishing:
(A) The date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot establish the date of first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States;
(B) The volume of that and subsequent shipments; and
(C) The date of the first sale to an unaffiliated customer in the United States; and

(v) In the case of a review of a countervailing duty order, a certification that the exporter or producer has informed the government of the exporting country that the government will be required to provide a full response to the Department’s questionnaire.

(c) Deadline for requesting review. An exporter or producer may request a new shipper review within one year of the date referred to in paragraph (b)(2)(iv)(A) of this section.

(d) Time for new shipper review—(1) In general. The Secretary will initiate a new shipper review under this section in the calendar month immediately following the anniversary month or the semiannual anniversary month if the request for the review is made during the 6-month period ending with the end of the anniversary month or the semiannual anniversary month (whichever is applicable).

(2) Semiannual anniversary month. The semiannual anniversary month is the calendar month which is 6 months after the anniversary month.

(3) Example. An order is published in January. The anniversary month would be January, and the semiannual anniversary month would be July. If the Secretary received a request for a new shipper review at any time during the period February-July, the Secretary would initiate a new shipper review in August. If the Secretary received a request for a new shipper review at any time during the period August-January, the Secretary would initiate a new shipper review in February.

(e) Suspension of liquidation; posting bond or security. When the Secretary initiates a new shipper review under this section, the Secretary will direct the Customs Service to suspend liquidation of any unliquidated entries of the subject merchandise from the relevant exporter or producer, and to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise.

(f) Rescission of new shipper review—(1) Withdrawal of request for review. The Secretary may rescind a new shipper review if the request for such review is withdrawn before the review is initiated.
review under this section, in whole or in part, if a party that requested a review withdraws its request not later than 60 days after the date of publication of notice of initiation of the requested review.

(2) Absence of entry and sale to an unaffiliated customer. The Secretary may rescind a new shipper review, in whole or in part, if the Secretary concludes that:

(i) As of the end of the normal period of review referred to in paragraph (g) of this section, there has not been an entry and sale to an unaffiliated customer in the United States of subject merchandise; and

(ii) An expansion of the normal period of review to include an entry and sale to an unaffiliated customer in the United States of subject merchandise would be likely to prevent the completion of the review within the time limits set forth in paragraph (i) of this section.

(3) Notice of Rescission. If the Secretary rescinds a new shipper review (in whole or in part), the Secretary will publish in the Federal Register notice of “Rescission of Antidumping (Countervailing Duty) New Shipper Review” or, if appropriate, “Partial Rescission of Antidumping (Countervailing Duty) New Shipper Review.”

(g) Period of review—(1) Antidumping proceeding—(i) In general. Except as provided in paragraph (g)(1)(ii) of this section, in an antidumping proceeding, a new shipper review under this section normally will cover, as appropriate, entries, exports, or sales during the following time periods:

(A) If the new shipper review was initiated in the month immediately following the anniversary month, the twelve-month period immediately preceding the anniversary month; or

(B) If the new shipper review was initiated in the month immediately following the semiannual anniversary month, the period of review will be the six-month period immediately preceding the semiannual anniversary month.

(ii) Exceptions. (A) If the Secretary initiates a new shipper review under this section in the month immediately following the first anniversary month, the review normally will cover, as appropriate, entries, exports, or sales during the period from the date of suspension of liquidation under this part to the end of the month immediately preceding the first anniversary month.

(B) If the Secretary initiates a new shipper review under this section in the month immediately following the first semiannual anniversary month, the review normally will cover, as appropriate, entries, exports, or sales during the period from the date of suspension of liquidation under this part to the end of the month immediately preceding the first semiannual anniversary month.

(2) Countervailing duty proceeding. In a countervailing duty proceeding, the period of review for a new shipper review under this section will be the same period as that specified in §351.213(e)(2) for an administrative review.

(h) Procedures. The Secretary will conduct a new shipper review under this section in accordance with §351.221.

(i) Time limits—(1) In general. Unless the time limit is waived under paragraph (j)(3) of this section, the Secretary will issue preliminary results of review (see §351.221(b)(4)) within 180 days after the date on which the new shipper review was initiated, and final results of review (see §351.221(b)(5)) within 90 days after the date on which the preliminary results were issued.

(2) Exception. If the Secretary concludes that a new shipper review is extraordinarily complicated, the Secretary may extend the 180-day period to 300 days, and may extend the 90-day period to 150 days.

(j) Multiple reviews. Notwithstanding any other provision of this subpart, if a review (or a request for a review) under §351.213 (administrative review), §351.214 (new shipper review), §351.215 (expedited antidumping review), or §351.216 (changed circumstances review) covers merchandise of an exporter or producer subject to a review (or to a request for a review) under this section, the Secretary may, after consulting with the exporter or producer:

(1) Rescind, in whole or in part, a review in progress under this subpart;

(2) Decline to initiate, in whole or in part, a review under this subpart; or
§ 351.215 Expedited antidumping review and security in lieu of estimated duty under section 736(c) of the Act.

(a) Introduction. Exporters and producers individually examined in an investigation normally cannot obtain a review of entries until an administrative review is requested. In addition, when an antidumping order is published, importers normally must begin to make a cash deposit of estimated antidumping duties upon the entry of subject merchandise. Section 736(c), however, establishes a special procedure under which exporters or producers may request an expedited review, and bonds, rather than cash deposits, may continue to be posted for a limited period of time if several criteria are satisfied. This section contains rules regarding requests for expedited antidumping reviews and the procedures applicable to such reviews.

(b) In general. If the Secretary determines that the criteria of section 736(c)(1) of the Act are satisfied, the Secretary:

(1) May permit, for not more than 90 days after the date of publication of an antidumping order, the posting of a bond or other security instead of the
§ 351.216 Changed circumstances review under section 751(b) of the Act.

(a) Introduction. Section 751(b) of the Act provides for what is known as a "changed circumstances" review. This section contains rules regarding requests for changed circumstances reviews and procedures for conducting such reviews.

(b) Requests for changed circumstances review. At any time, an interested party may request a changed circumstances review, under section 751(b) of the Act, of an order or a suspended investigation. Within 45 days after the date on which a request is filed, the Secretary will determine whether to initiate a changed circumstances review.

(c) Limitation on changed circumstances review. Unless the Secretary finds that good cause exists, the Secretary will not review a final determination in an investigation (see section 705(a) or section 755(a) of the Act) or a suspended investigation (see section 704 or section 734 of the Act) less than 24 months after the date of publication of notice of the final determination or the suspension of the investigation.

(d) Procedures. If the Secretary decides that changed circumstances sufficient to warrant a review exist, the Secretary will conduct a changed circumstances review in accordance with § 351.221.

(e) Time limits. The Secretary will issue final results of review (see § 351.221(b)(5)) within 270 days after the date on which the changed circumstances review is initiated, or within 45 days if all parties to the proceeding agree to the outcome of the review.

§ 351.217 Reviews to implement results of subsidies enforcement proceeding under section 751(g) of the Act.

(a) Introduction. Section 751(g) provides a mechanism for incorporating into an ongoing countervailing duty proceeding the results of certain subsidy-related disputes under the WTO Subsidies Agreement. Where the United States, in the WTO, has successfully challenged the "nonactionable" (e.g., noncountervailable) status of a foreign subsidy, or where the United States has successfully challenged a prohibited or actionable subsidy, the Secretary may conduct a review to determine the effect, if any, of the successful outcome on an existing countervailing duty order or suspended investigation. This section contains rules regarding the initiation and conduct of reviews under section 751(g).

(b) Violations of Article 8 of the Subsidies Agreement. If:

(1) The Secretary receives notice from the Trade Representative of a violation of Article 8 of the Subsidies Agreement;

(2) The Secretary has reason to believe that merchandise subject to an existing countervailing duty order or suspended investigation is benefiting from the subsidy or subsidy program found to have been in violation of Article 8; and

(3) No administrative review is in progress, the Secretary will initiate an Article 8 violation review of the order or suspended investigation to determine whether the subject merchandise subject to an existing countervailing duty order or suspended investigation is benefiting from the subsidy or subsidy program found to have been in violation of Article 8 of the Subsidies Agreement.

(c) Withdrawal of subsidy or imposition of countermeasures. If the Trade Representative notifies the Secretary that, under Article 4 or Article 7 of the Subsidies Agreement:

(1)(i)(A) The United States has imposed countermeasures; and

(B) Such countermeasures are based on the effects in the United States of
imports of merchandise that is the subject of a countervailing duty order; or
   (ii) A WTO member country has withdrawn a countervailable subsidy provided with respect to merchandise subject to a countervailing duty order, then

(2) The Secretary will initiate an Article 4/Article 7 review of the order to determine if the amount of estimated duty to be deposited should be adjusted or the order should be revoked.

(d) Procedures. The Secretary will conduct an Article 8 violation review or an Article 4/Article 7 review under this section in accordance with §351.221.

(e) Expedited reviews. The Secretary will conduct reviews under this section on an expedited basis.

§351.218 Sunset reviews under section 751(c) of the Act.

(a) Introduction. The URAA added a new procedure, commonly referred to as “sunset reviews,” in section 751(c) of the Act. In general, no later than once every five years, the Secretary must determine whether dumping or countervailable subsidies would be likely to continue or resume if an order were revoked or a suspended investigation were terminated. The Commission must conduct a similar review to determine whether injury would be likely to continue or resume in the absence of an order or suspended investigation. If the determinations under section 751(c) of both the Secretary and the Commission are affirmative, the order (or suspended investigation) remains in place. If either determination is negative, the order will be revoked (or the suspended investigation will be terminated). This section contains rules regarding the procedures for sunset reviews.

(b) In general. The Secretary will conduct a sunset review, under section 751(c) of the Act, of each antidumping and countervailing duty order and suspended investigation, and, under section 752(b) or section 752(c) (whichever is applicable), will determine whether revocation of an antidumping or countervailing duty order or termination of a suspended investigation would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy.

(c) Notice of initiation of review; early initiation—(1) Initial sunset review. No later than 30 days before the fifth anniversary date of an order or suspension of an investigation (see section 751(c)(1) of the Act), the Secretary will publish a notice of initiation of a sunset review (see section 751(c)(2) of the Act).

(2) Subsequent sunset reviews. In the case of an order or suspended investigation that is continued following a sunset review initiated under paragraph (c)(1) of this section, no later than 30 days before the fifth anniversary of the date of the last determination by the Commission to continue the order or suspended investigation, the Secretary will publish a notice of initiation of a sunset review (see section 751(c)(2) of the Act).

(3) Early initiation. The Secretary may publish a notice of initiation at an earlier date than the dates described in paragraph (c)(1) and (2) of this section if a domestic interested party demonstrates to the Secretary’s satisfaction that an early initiation would promote administrative efficiency. However, if the Secretary determines that the domestic interested party that requested early initiation is a related party or an importer under section 771(4)(B) of the Act and §351.203(e)(4), the Secretary may decline the request for early initiation.

(4) Transition orders. The Secretary will initiate sunset reviews of transition orders, as defined in section 751(c)(6)(C) of the Act, in accordance with section 751(c)(6) of the Act.

(d) Participation in sunset review—(1) Domestic interested party notification of intent to participate—(i) Filing of notice of intent to participate. Where a domestic interested party intends to participate in a sunset review, the interested party must, not later than 15 days after the date of publication in the Federal Register of the notice of initiation, file a notice of intent to participate in a sunset review with the Secretary.

(ii) Contents of notice of intent to participate. Every notice of intent to participate in a sunset review must include a statement expressing the domestic interested party’s intent to participate in the sunset review and the following information:
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(A) The name, address, and phone number of the domestic interested party (and its members, if applicable) that intends to participate in the sunset review and the statutory basis (under section 771(9) of the Act) for interested party status;

(B) A statement indicating whether the domestic producer:

(1) Is related to a foreign producer or to a foreign exporter under section 771(4)(B) of the Act; or

(2) Is an importer of the subject merchandise or related to such an importer under section 771(4)(B) of the Act;

(C) The name, address, and phone number of legal counsel or other representative, if any;

(D) The subject merchandise and country subject to the sunset review; and

(E) The citation and date of publication in the Federal Register of the notice of initiation.

(iii) Failure of domestic interested party to file notice of intent to participate in the sunset review. (A) A domestic interested party that does not file a notice of intent to participate in the sunset review will be considered not willing to participate in the review and the Secretary will not accept or consider any unsolicited submissions from that party during the course of the review.

(B) If no domestic interested party files a notice of intent to participate in the sunset review, the Secretary will:

(1) Conclude that no domestic interested party has responded to the notice of initiation under section 751(c)(3)(A) of the Act;

(2) Notify the International Trade Commission in writing as such normally not later than 20 days after the date of publication in the Federal Register of the notice of initiation; and

(3) Not later than 90 days after the date of publication in the Federal Register of the Notice of Initiation, issue a final determination revoking the order or terminating the suspended investigation (see §§351.221(c)(5)(i) and 351.222(i)).

(ii) Failure of domestic interested party to file notice of intent to participate in the sunset review. (A) A domestic interested party that does not file a notice of intent to participate in the sunset review before the Department under section 751(c)(4) of the Act by filing a statement of waiver with the Department, not later than 30 days after the date of publication in the Federal Register of the notice of initiation. If a respondent interested party waives participation in a sunset review before the Department, the Secretary will not accept or consider any unsolicited submissions from that party during the course of the review. Waiving participation in a sunset review before the Department will not affect a party’s opportunity to participate in the sunset review conducted by the International Trade Commission.

(2) Waiver of response by a respondent interested party to a notice of initiation—

(i) Filing of statement of waiver. Every statement of waiver must include a statement indicating that the respondent interested party waives participation in the sunset review before the Department; a statement that the respondent interested party is likely to dump or benefit from a countervailable subsidy (as the case may be) if the order is revoked or the investigation is terminated; in the case of a foreign government in a CVD sunset review, a statement that the government is likely to provide a countervailable subsidy if the order is revoked or the investigation is terminated; and the following information:

(A) The name, address, and phone number of the respondent interested party waiving participation in the sunset review before the Department;

(B) The name, address, and phone number of legal counsel or other representative, if any;

(C) The subject merchandise and country subject to the sunset review; and

(D) The citation and date of publication in the Federal Register of the notice of initiation.

(3) Contents of statement of waiver. Every statement of waiver must include a statement indicating that the respondent interested party waives participation in the sunset review before the Department; a statement that the respondent interested party is likely to dump or benefit from a countervailable subsidy (as the case may be) if the order is revoked or the investigation is terminated; and the following information:

(A) The name, address, and phone number of the respondent interested party waiving participation in the sunset review before the Department;

(B) The name, address, and phone number of legal counsel or other representative, if any;

(C) The subject merchandise and country subject to the sunset review; and

(D) The citation and date of publication in the Federal Register of the notice of initiation.

(iii) Waiver of participation by a foreign government in a CVD sunset review. Where a foreign government waives participation in a CVD sunset review under paragraph (d)(2)(i) or (d)(2)(iii) of this section, the Secretary will:

(A) Conclude that respondent interested parties have provided inadequate response to the notice of initiation under section 751(c)(3)(B) of the Act;
(B) Notify the International Trade Commission and conduct an expedited sunset review and issue final results of review in accordance with paragraph (e)(1)(ii)(C) of this section; and

(C) Base the final results of review on the facts available in accordance with 351.308(f).

(3) Substantive response to a notice of initiation—(i) Time limit for substantive response to a notice of initiation. A complete substantive response to a notice of initiation, filed under this section, must be submitted to the Department not later than 30 days after the date of publication in the Federal Register of the notice of initiation.

(ii) Required information to be filed by all interested parties in substantive response to a notice of initiation. Except as provided in paragraph (d)(3)(v)(A) of this section, each interested party that intends to participate in a sunset review must file a submission with the Department containing the following:

(A) The name, address, and phone number of the interested party (and its members, if applicable) that intends to participate in the sunset review and the statutory basis (under section 771(9) of the Act) for interested party status;

(B) The name, address, and phone number of legal counsel or other representative, if any;

(C) The subject merchandise and country subject to the sunset review;

(D) The citation and date of publication in the Federal Register of the notice of initiation;

(E) A statement expressing the interested party’s willingness to participate in the review by providing information requested by the Department, which must include a summary of that party’s historical participation in any segment of the proceeding before the Department related to the subject merchandise;

(F) A statement regarding the likely effects of revocation of the order or termination of the suspended investigation under review, which must include any factual information, argument, and reason to support such statement;

(G) Factual information, argument, and reason concerning the dumping margin or countervailing duty rate, as applicable, that is likely to prevail if the Secretary revokes the order or terminates the suspended investigation, that the Department should select for a particular interested party(s);

(H) A summary of the Department’s findings regarding duty absorption, if any, including a citation to the Federal Register notice in which the Department’s findings are set forth; and

(I) A description of any relevant scope clarification or ruling, including a circumvention determination, or changed circumstances determination issued by the Department during the proceeding with respect to the subject merchandise.

(iii) Additional required information to be filed by respondent interested parties in substantive response to a notice of initiation. Except as provided in paragraph (d)(3)(v)(A) of this section, the submission from each respondent interested party that intends to participate in a sunset review must also contain the following:

(A) That party’s individual weighted average dumping margin or countervailing duty rate, as applicable, from the investigation and each subsequent completed administrative review, including the final margin or rate, as applicable, where such margin or rate was changed as a result of a final and conclusive court order;

(B) For each of the five calendar years (or fiscal years, if more appropriate) preceding the year of publication of the notice of initiation, that party’s volume and value (normally on an FOB basis) of exports of subject merchandise to the United States;

(C) As applicable, for the calendar year (or fiscal year, if more appropriate) preceding the year of initiation of the dumping investigation, that party’s volume and value (normally on an FOB basis) of exports of subject merchandise to the United States;

(D) For each of the five calendar years (or fiscal years, if more appropriate) preceding the year of publication of the notice of initiation, on a volume basis (or value basis, if more appropriate), that party’s percentage of the total exports of subject merchandise (defined in section 771(25) of the Act) to the United States; and
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(E) For each of the three most recent years, including the year of publication of the notice of initiation, that party’s volume and value (normally on an FOB basis) of exports of subject merchandise to the United States during the two fiscal quarters as of the month preceding the month in which the notice of initiation was published.

(iv) Optional information to be filed by interested parties in substantive response to a notice of initiation—(A) Showing good cause. An interested party may submit information or evidence to show good cause for the Secretary to consider other factors under section 752(b)(2) (CVD) or section 752(c)(2) (AD) of the Act and paragraph (e)(2)(ii) of this section. Such information or evidence must be submitted in the party’s substantive response to the notice of initiation under paragraph (d)(3) of this section.

(B) Other information. A substantive response from an interested party under paragraph (d)(3) of this section also may contain any other relevant information or argument that the party would like the Secretary to consider.

(v) Required information to be filed by a foreign government in substantive response to the notice of initiation in a CVD sunset review—(A) In general. The foreign government of a country subject to a CVD sunset review (see section 771(9)(B) of the Act) that intends to participate in a sunset review must file a submission with the Department under paragraph (d)(3)(i) of this section containing the information required under paragraphs (d)(3)(ii)(A) through (E) of this section.

(B) Additional required information to be filed by a foreign government in a CVD sunset review involving an order where the investigation was conducted on an aggregate basis. The submission from the foreign government of a country subject to a CVD sunset review, involving an order where the investigation was conducted on an aggregate basis, must also contain:

(1) The information required under paragraphs (d)(3)(ii)(F), (d)(3)(ii)(G), and (d)(3)(ii)(I) of this section;

(2) The countervailing duty rate from the investigation and each subsequent completed administrative review, including the final rate where such rate was changed as a result of a final and conclusive court order; and

(3) For each of the five calendar years (or fiscal years, if more appropriate) preceding the year of publication of the notice of initiation, the volume and value (normally on an FOB basis) of exports of subject merchandise to the United States.

(vi) Substantive responses from industrial users and consumers. An industrial user of the subject merchandise or a representative consumer organization, as described in section 777(h) of the Act, that intends to participate in a sunset review must file a submission with the Department under paragraph (d)(3)(i) of this section containing the information required under paragraphs (d)(3)(ii)(A) through (D) of this section and may submit other relevant information under paragraphs (d)(3)(ii) and (d)(3)(iv) of this section.

(4) Rebuttal to substantive response to a notice of initiation. Any interested party that files a substantive response to a notice of initiation under paragraph (d)(3) of this section may file a rebuttal to any other party’s substantive response to a notice of initiation not later than five days after the date the substantive response is filed with the Department. Except as provided in §351.309(e), the Secretary normally will not accept or consider any additional information from a party after the time for filing rebuttals has expired, unless the Secretary requests additional information from parties after determining to proceed to a full sunset review under paragraph (e)(2) of this section.

(e) Conduct of sunset review—(1) Adequacy of response to a notice of initiation—(1) Adequacy of response from domestic interested parties—(A) In general. The Secretary will make its determination of adequacy of response on a case-by-case basis; however, the Secretary normally will conclude that domestic interested parties have provided adequate response to a notice of initiation where it receives a complete substantive response under paragraph (d)(3) of this section from at least one domestic interested party.
(B) Disregarding response from a domestic interested party. In making its determination concerning the adequacy of response from domestic interested parties under paragraph (e)(1)(i)(A) of this section, the Secretary may disregard a response from a domestic producer:

(1) Related to a foreign producer or to a foreign exporter under section 771(4)(B) of the Act; or

(2) That is an importer of the subject merchandise or is related to such an importer under section 771(4)(B) of the Act (see paragraph (d)(1)(ii)(B) of this section).

(C) Inadequate response from domestic interested parts. Where the Secretary determines to disregard a response from a domestic interested party under paragraph (e)(1)(i)(A) or (e)(1)(i)(B) of this section and no other domestic interested party has filed a complete substantive response to the notice of initiation under paragraph (d)(3) of this section, the Secretary will:

(1) Conclude that no domestic interested party has responded to the notice of initiation under section 751(c)(3)(A) of the Act;

(2) Notify the International Trade Commission in writing as such normally not later than 40 days after the date of publication in the FEDERAL REGISTER of the Notice of Initiation; and

(3) Not later than 90 days after the date of publication in the FEDERAL REGISTER of the Notice of Initiation, issue a final determination revoking the order or terminating the suspended investigation (see §§351.221(c)(5)(ii) and 351.222(i)).

(ii) Adequacy of response from respondent interested parties—(A) In general. The Secretary will make its determination of adequacy of response on a case-by-case basis; however, the Secretary normally will conclude that respondent interested parties have provided adequate response to a notice of initiation where it receives complete substantive responses under paragraph (d)(3) of this section from respondent interested parties accounting on average for more than 50 percent, on a volume basis (or value basis, if appropriate), of the total exports of subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation.

(B) Failure of a foreign government to file a substantive response to a notice of initiation in a CVD sunset review. If a foreign government fails to file a complete substantive response to a notice of initiation in a CVD sunset review under paragraph (d)(3)(v) of this section or waives participation in a CVD sunset review under paragraph (d)(2)(i) of this section, the Secretary will:

(1) Conclude that respondent interested parties have provided inadequate response to the Notice of Initiation under section 751(c)(3)(B) of the Act;

(2) Notify the International Trade Commission and conduct an expedited sunset review and issue final results of review in accordance with paragraph (e)(1)(i)(C) of this section; and

(3) Base the final results of review on the facts available in accordance with 351.308(f).

(C) Inadequate response from respondent interested parties. If the Secretary determines that respondent interested parties provided inadequate response to a notice of initiation under paragraph (d)(2)(iv), (e)(1)(i)(A), or (e)(1)(i)(B) of this section, the Secretary:

(1) Will notify the International Trade Commission in writing as such normally not later than 50 days after the date of publication in the FEDERAL REGISTER of the Notice of Initiation; and

(2) Normally will conduct an expedited sunset review and, not later than 120 days after the date of publication in the FEDERAL REGISTER of the notice of initiation, issue final results of review based on the facts available in accordance with §351.308(f) (see section 751(c)(3)(B) of the Act and §351.221(c)(5)(ii)).

(2) Full sunset review upon adequate response from domestic and respondent interested parties—(1) In general. Normally, only where the Department receives adequate response to the notice of initiation from domestic interested parties under paragraph (e)(1)(i)(A) of this section and from respondent interested parties under paragraph (e)(1)(ii)(A) of this section, will the Department conduct a full sunset review. Even when the Department conducts a
full sunset review, only under the most extraordinary circumstances will the Secretary rely on a countervailing duty rate or a dumping margin other than those it calculated and published in its prior determinations, and in no case will the Secretary calculate a net countervailable subsidy or a dumping margin for a new shipper in the context of a sunset review.

(iii) Consideration of other factors under section 752(b)(2) (CVD) or section 752(c)(2) (AD) of the Act. The Secretary will consider other factors under section 752(b)(2) (CVD) or section 752(c)(2) (AD) of the Act if the Secretary determines that good cause to consider such other factors exists. The Secretary normally will consider such other factors only where it conducts a full sunset review under paragraph (e)(2)(i) of this section.

(f) Time limits—(1) Preliminary results of full sunset review. The Department normally will issue its preliminary results in a full sunset review not later than 110 days after the date of publication in the Federal Register of the notice of initiation.

(2) Verification—(i) In general. The Department will verify factual information relied upon in making its final determination normally only in a full sunset review (see section 782(i)(2) of the Act and §351.307(b)(1)(iii)) and only where needed. The Department will conduct verification normally only if, in its preliminary results, the Department determines that revocation of the order or termination of the suspended investigation, as applicable, is not likely to lead to continuation or recurrence of a countervailable subsidy or dumping (see section 752(b) and section 752(c) of the Act), as applicable, and the Department’s preliminary results are not based on countervailing duty rates or dumping margins, as applicable, determined in the investigation or subsequent reviews.

(ii) Timing of verification. The Department normally will conduct verification, under paragraph (f)(2)(i) of this section and §351.307, approximately 120 days after the date of publication in the Federal Register of the notice of initiation.

§351.219 Reviews of countervailing duty orders in connection with an investigation under section 753 of the Act.

(a) Introduction. Section 753 of the Act is a transition provision for countervailing duty orders that were issued under section 303 of the Act without an injury determination by the Commission. Under the Subsidies Agreement, one country may not impose countervailing duties on imports from another WTO Member without first making a determination that such imports have caused injury to a domestic industry. Section 753 provides a mechanism for

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providing an injury test with respect to those “no-injury” orders under section 303 that apply to merchandise from WTO Members. This section contains rules regarding requests for section 753 investigations by a domestic interested party; and the procedures that the Department will follow in reviewing a countervailing duty order and providing the Commission with advice regarding the amount and nature of a countervailable subsidy.

(b) Notification of domestic interested parties. The Secretary will notify directly domestic interested parties as soon as possible after the opportunity arises for requesting an investigation by the Commission under section 753 of the Act.

c) Initiation and conduct of section 753 review. Where the Secretary deems it necessary in order to provide to the Commission information on the amount or nature of a countervailable subsidy (see section 753(b)(2) of the Act), the Secretary may initiate a section 753 review of the countervailing duty order in question. The Secretary will conduct a section 753 review in accordance with § 351.221.

§ 351.220 Countervailing duty review at the direction of the President under section 762 of the Act.

At the direction of the President or a designee, the Secretary will conduct a review under section 762(a)(1) of the Act to determine if a countervailable subsidy is being provided with respect to merchandise subject to an understanding or other kind of quantitative restriction agreement accepted under section 704(a)(2) or section 704(c)(3) of the Act. The Secretary will conduct a review under this section in accordance with § 351.221. If the Secretary’s final results of review under this section and the Commission’s final results of review under section 762(a)(2) of the Act are both affirmative, the Secretary will issue a countervailing duty order and order suspension of liquidation in accordance with section 762(b) of the Act.

§ 351.221 Review procedures.

(a) Introduction. The procedures for reviews are similar to those followed in investigations. This section details the procedures applicable to reviews in general, as well as procedures that are unique to certain types of reviews.

(b) In general. After receipt of a timely request for a review, or on the Secretary’s own initiative when appropriate, the Secretary will:

1) Promptly publish in the Federal Register notice of initiation of the review;

2) Before or after publication of notice of initiation of the review, send to appropriate interested parties or other persons (or, if appropriate, a sample of interested parties or other persons) questionnaires requesting factual information for the review;

3) Conduct, if appropriate, a verification under § 351.307;

4) Issue preliminary results of review, based on the available information, and publish in the Federal Register notice of the preliminary results of review that include:

i) The rates determined, if the review involved the determination of rates; and

ii) An invitation for argument consistent with § 351.309;

5) Issue final results of review and publish in the Federal Register notice of the final results of review that include the rates determined, if the review involved the determination of rates;

6) If the type of review in question involves a determination as to the amount of duties to be assessed, promptly after publication of the notice of final results instruct the Customs Service to assess antidumping duties or countervailing duties (whichever is applicable) on the subject merchandise covered by the review, except as otherwise provided in § 351.106(c) with respect to de minimis duties; and

7) If the review involves a revision to the cash deposit rates for estimated antidumping duties or countervailing duties, instruct the Customs Service to collect cash deposits at the revised rates on future entries.

(c) Special rules—(1) Administrative reviews and new shipper reviews. In an administrative review under section 751(a)(1) of the Act and § 351.213 and a new shipper review under section 751(a)(2)(B) of the Act and § 351.214 the Secretary:
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(i) Will publish the notice of initiation of the review no later than the last day of the month following the anniversary month or the semiannual anniversary month (as the case may be); and

(ii) Normally will send questionnaires no later than 30 days after the date of publication of the notice of initiation.

(2) Expedited antidumping review. In an expedited antidumping review under section 736(c) of the Act and § 351.215, the Secretary:

(i) Will include in the notice of initiation of the review an invitation for argument consistent with § 351.309, and a statement that the Secretary is permitting the posting of a bond or other security instead of a cash deposit of estimated antidumping duties;

(ii) Will instruct the Customs Service to accept, instead of the cash deposit of estimated antidumping duties under section 736(a)(3) of the Act, a bond for each entry of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of initiation of the investigation and through the date not later than 90 days after the date of publication of the order; and

(iii) Will not issue preliminary results of review.

(3) Changed circumstances review. In a changed circumstances review under section 751(b) of the Act and § 351.216, the Secretary:

(i) Will include in the preliminary results of review a description of any action the Secretary proposed based on the preliminary or final results;

(ii) May combine the notice of initiation of the review and the preliminary results of review in a single notice if the Secretary concludes that expedited action is warranted; and

(iii) May refrain from issuing questionnaires under paragraph (b)(2) of this section.

(4) Article 8 Violation review and Article 4/Article 7 review. In an Article 8 Violation review or an Article 4/Article 7 review under section 751(g) of the Act and § 351.217, the Secretary:

(i) Will include in the notice of initiation of the review an invitation for argument consistent with § 351.309 and will notify all parties to the proceeding at the time the Secretary initiates the review;

(ii) Will not issue preliminary results of review; and

(iii) In the final results of review will indicate the amount, if any, by which the estimated duty to be deposited should be adjusted, and, in an Article 4/Article 7 review, any action, including revocation, that the Secretary will take based on the final results.

(5) Sunset review. In a sunset review under section 751(c) of the Act and § 351.218:

(i) The notice of initiation of a sunset review will contain a request for the information described in § 351.218(d); and

(ii) The Secretary, without issuing preliminary results of review, may issue final results of review under paragraphs (3) or (4) of subsection 751(c) of the Act if the conditions of those paragraphs are satisfied.

(6) Section 753 review. In a section 753 review under section 753 of the Act and § 351.219, the Secretary:

(i) Will include in the notice of initiation of the review an invitation for argument consistent with § 351.309, and will notify all parties to the proceeding at the time the Secretary initiates the review; and

(ii) May decline to issue preliminary results of review.

(7) Countervailing duty review at the direction of the President. In a countervailing duty review at the direction of the President under section 762 of the Act and § 351.220, the Secretary will:

(i) Include in the notice of initiation of the review a description of the merchandise, the period under review, and a summary of the available information which, if accurate, would support the imposition of countervailing duties;

(ii) Notify the Commission of the initiation of the review and the preliminary results of review;

(iii) Include in the preliminary results of review the countervailable subsidy, if any, during the period of review and a description of official changes in the subsidy programs made by the government of the affected country that affect the estimated countervailable subsidy; and
(iv) Include in the final results of review the countervailable subsidy, if any, during the period of review and a description of official changes in the subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the estimated countervailable subsidy.

§ 351.222 Revocation of orders; termination of suspended investigations.

(a) Introduction. “Revocation” is a term of art that refers to the end of an antidumping or countervailing proceeding in which an order has been issued. “Termination” is the companion term for the end of a proceeding in which the investigation was suspended due to the acceptance of a suspension agreement. Generally, a revocation or termination may occur only after the Department or the Commission has conducted one or more reviews under section 751 of the Act. This section contains rules regarding requirements for a revocation or termination; and procedures that the Department will follow in determining whether to revoke an order or terminate a suspended investigation.

(b) Revocation or termination based on absence of dumping. (1) In determining whether to revoke an antidumping duty order or terminate a suspended antidumping investigation, the Secretary will consider:

(i) Whether all exporters and producers covered at the time of revocation by the order or the suspension agreement have sold the subject merchandise at not less than normal value for a period of at least three consecutive years; and

(ii) Whether the continued application of the antidumping duty order is otherwise necessary to offset dumping.

(2) If the Secretary determines, based upon the criteria in paragraphs (b)(1)(i) and (ii) of this section, that the antidumping duty order or suspension of the antidumping duty investigation is no longer warranted, the Secretary will revoke the order or terminate the investigation.

(c) Revocation or termination based on absence of countervailable subsidy. (1)(i) In determining whether to revoke a countervailing duty order or terminate a suspended countervailing duty investigation, the Secretary will consider:

(A) Whether the government of the affected country has eliminated all countervailable subsidies on the subject merchandise by abolishing the subject merchandise, for a period of at least three consecutive years, all programs that the Secretary has found countervailable;

(B) Whether exporters and producers of the subject merchandise are continuing to receive any net countervailable subsidy from an abolished program referred to in paragraph (c)(1)(i)(A) of this section; and

(C) Whether the continued application of the countervailing duty order or suspension of countervailing duty investigation is otherwise necessary to offset subsidization.

(ii) If the Secretary determines, based upon the criteria in paragraphs (c)(1)(i)(A) through (C) of this section, that the countervailing duty order or suspension of the countervailing duty investigation is no longer warranted, the Secretary will revoke the order or terminate the suspended investigation.

(2)(i) In determining whether to revoke a countervailing duty order or terminate a suspended countervailing duty investigation, the Secretary will consider:

(A) Whether all exporters and producers covered at the time of revocation by the order or the suspension agreement have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years; and

(B) Whether the continued application of the countervailing duty order or suspension of the countervailing duty investigation is otherwise necessary to offset subsidization.

(ii) If the Secretary determines, based upon the criteria in paragraphs (c)(2)(i)(A) and (B) of this section, that the countervailing duty order or the suspension of the countervailing duty investigation is no longer warranted, the Secretary will revoke the order or terminate the suspended investigation.
(d) Treatment of unreviewed intervening years—(1) In general. The Secretary will not revoke an order or terminate a suspended investigation under paragraphs (b) or (c) of this section unless the Secretary has conducted a review under this subpart of the first and third (or fifth) years of the three-and-five-year consecutive time periods referred to in those paragraphs. The Secretary need not have conducted a review of an intervening year (see paragraph (d)(2) of this section). However, except in the case of a revocation or termination under paragraph (c)(1) of this section if the government submits with the request its certification that it has satisfied, during the period of review described in §351.213(e)(2), the requirements of paragraph (c)(1)(i) of this section regarding the abolition of countervailable subsidy programs, and that it will not reinstate for the subject merchandise those programs or substitute other countervailable subsidy programs;

(2) Intervening year. “Intervening year” means any year between the first and final year of the consecutive period on which revocation or termination is conditioned.

(e) Request for revocation or termination—(1) Antidumping proceeding. During the third and subsequent annual anniversary months of the publication of an antidumping order or suspension of an antidumping investigation, any exporter or producer may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (b) of this section if the person submits with the request:

(i) Certifications for all exporters and producers covered by the order or suspension agreement that they sold the subject merchandise at not less than normal value during the period of review described in §351.213(e)(1), and that in the future they will not sell the merchandise at less than normal value; and

(ii) Certifications for all exporters and producers covered by the order or suspension agreement that they sold the subject merchandise to the United States in commercial quantities.

(2) Countervailing duty proceeding. (i) During the third and subsequent annual anniversary months of the publication of a countervailing duty order or suspension of a countervailing duty investigation, the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (c)(1) of this section if the government submits with the request its certification that it has satisfied, during the period of review described in §351.213(e)(2), the requirements of paragraph (c)(1)(i) of this section regarding the abolition of countervailable subsidy programs, and that it will not reinstate for the subject merchandise those programs or substitute other countervailable subsidy programs;

(ii) During the fifth and subsequent annual anniversary months of the publication of a countervailing duty order or suspended countervailing duty investigation, the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (c)(2) of this section if the government submits with the request:

(A) Certifications for all exporters and producers covered by the order or suspension agreement that they have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years (see paragraph (c)(2)(i) of this section);

(B) Those exporters’ and producers’ certifications that they will not apply for or receive any net countervailable subsidy on the subject merchandise from any program the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs (see paragraph (c)(2)(ii) of this section); and

(C) A certification from each exporter or producer that, during each of the consecutive years referred to in paragraph (c)(2) of this section, that person sold the subject merchandise to the United States in commercial quantities.
(f) Procedures. (1) Upon receipt of a timely request for revocation or termination under paragraph (e) of this section, the Secretary will consider the request as including a request for an administrative review and will initiate and conduct a review under §351.213.

(2) When the Secretary is considering a request for revocation or termination under paragraph (e) of this section, in addition to the requirements of §351.221 regarding the conduct of an administrative review, the Secretary will:
   (i) Publish with the notice of initiation under §351.221(b)(1), notice of “Request for Revocation of Order” or “Request for Termination of Suspended Investigation” (whichever is applicable);
   (ii) Conduct a verification under §351.307;
   (iii) Include in the preliminary results of review under §351.221(b)(4) the Secretary’s decision whether there is a reasonable basis to believe that the requirements for revocation or termination are met;
   (iv) If the Secretary decides that there is a reasonable basis to believe that the requirements for revocation or termination are met, publish with the notice of preliminary results of review under §351.221(b)(4) notice of “Intent To Revoke Order” or “Intent To Terminate Suspended Investigation” (whichever is applicable);
   (v) Include in the final results of review under §351.221(b)(5) the Secretary’s final decision whether the requirements for revocation or termination are met; and
   (vi) If the Secretary determines that the requirements for revocation or termination are met, publish with the notice of final results of review under §351.221(b)(5) notice of “Revocation of Order” or “Termination of Suspended Investigation” (whichever is applicable).

(3) If the Secretary revokes an order, the Secretary will order the suspension of liquidation terminated for the merchandise covered by the revocation on the first day after the period under review, and will instruct the Customs Service to release any cash deposit or bond.

(g) Revocation or termination based on changed circumstances. (1) The Secretary may revoke an order, in whole or in part, or terminate a suspended investigation if the Secretary concludes that:
   (i) Producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) or suspended investigation pertains have expressed a lack of interest in the order, in whole or in part, or suspended investigation (see section 782(h) of the Act); or
   (ii) Other changed circumstances sufficient to warrant revocation or termination exist.

(2) If at any time the Secretary concludes from the available information that changed circumstances sufficient to warrant revocation or termination may exist, the Secretary will conduct a changed circumstances review under §351.216.

(3) In addition to the requirements of §351.221, the Secretary will:
   (i) Publish with the notice of initiation (see §353.221(b)(1), notice of “Consideration of Revocation of Order (in Part)” or “Consideration of Termination of Suspended Investigation” (whichever is applicable);
   (ii) If the Secretary’s conclusion regarding the possible existence of changed circumstances (see paragraph (g)(2) of this section), is not based on a request, the Secretary, not later than the date of publication of the notice of “Consideration of Revocation of Order (in Part)” or “Consideration of Termination of Suspended Investigation” (whichever is applicable) (see paragraph (g)(3)(i) of this section), will serve written notice of the consideration of revocation or termination on each interested party listed on the Department’s service list and on any other person that the Secretary has reason to believe is a domestic interested party;
   (iii) Conduct a verification, if appropriate, under §351.307;
   (iv) Include in the preliminary results of review under §351.221(b)(4), the Secretary’s decision whether there is a reasonable basis to believe that changed circumstances warrant revocation or termination;
   (v) If the Secretary’s preliminary decision is that changed circumstances warrant revocation or termination,
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publish with the notice of preliminary
results of review, under § 351.221(b)(4),
notice of “Intent to Revoke Order (in
Part)” or “Intent to Terminate Sus-
pended Investigation” (whichever is
applicable);
(vi) Include in the final results of re-
view, under § 351.221(b)(5), the Sec-
retary’s final decision whether changed
circumstances warrant revocation or
termination; and
(vii) If the Secretary’s determines
that changed circumstances warrant
revocation or termination, publish
with the notice of final results of re-
view, under § 351.221(b)(5), notice of
“Revocation of Order (in Part)” or
“Termination of Suspended Investiga-
tion” (whichever is applicable).
(4) If the Secretary revokes an order,
in whole or in part, under paragraph (g)
of this section, the Secretary will order
the suspension of liquidation ended for
the merchandise covered by the revoca-
tion on the effective date of the notice
of revocation, and will instruct the
Customs Service to release any cash
deposit or bond.

(h) Revocation or termination based on
injury reconsideration. If the Commis-
sion determines in a changed cir-
cumstances review under section
751(h)(2) of the Act that the revocation
of an order or termination of a sus-
pended investigation is not likely to
lead to continuation or recurrence of
material injury, the Secretary will re-
voke, in whole or in part, the order or
terminate the suspended investigation,
and will publish in the FEDERAL REG-
ISTER notice of “Revocation of Order
(in Part)” or “Termination of Sus-
pended Investigation” (whichever is
applicable).
(1) Circumstances under which the Secretary will revoke an order or
terminate a suspended investigation. In
the case of a sunset review under
§ 351.218, the Secretary will revoke an
order or terminate a suspended inves-
tigation:
(i) Under section 751(c)(3)(A) of the
Act, where no domestic interested
party files a Notice of Intent to Par-
ticipate in the sunset review under
§ 351.218(d)(1), or where the Secretary
determines under § 351.218(c)(1)(i)(C)
that domestic interested parties have
provided inadequate response to the
Notice of Initiation, not later than 90
days after the date of publication in the
FEDERAL REGISTER of the notice of
initiation;
(ii) Under section 751(d)(2) of the Act,
where the Secretary determines that
revocation or termination is not likely
to lead to continuation or recurrence
of a countervailable subsidy or dump-
ing (see section 752(b) and section 752(c)
of the Act), as applicable, not later
than 240 days (or 330 days where a full
sunset review is fully extended) after
the date of publication in the FEDERAL
REGISTER of the notice of initiation; or
(iii) Under section 751(d)(2) of the
Act, where the International Trade
Commission makes a determination,
under section 752(a) of the Act, that
revocation or termination is not likely
to lead to continuation or recurrence
of material injury, not later than seven
days after the date of publication in the
FEDERAL REGISTER of the Intern-
tional Trade Commission’s deter-
mination concluding the sunset review.
(2) Effective date of revocation—(i) In
general. Except as provided in para-
graph (1)(2)(ii) of this section, where
the Secretary revokes an order or ter-
minates a suspended investigation,
pursuant to section 751(c)(3)(A) or sec-
tion 751(d)(2) of the Act (see paragraph
(1)(1) of this section), the revocation or
termination will be effective on the
fifth anniversary of the date of publica-
tion in the FEDERAL REGISTER of the
order or suspended investigation, as ap-
licable. This paragraph also applies to
subsequent sunset reviews of transition
orders (see section and section 751(c)(6)(A)(ii)
of the Act).
(ii) Transition orders. Where the Sec-
cretary revokes a transition order (de-
finite in section 751(c)(6)(C) of the Act)
pursuant to section 751(c)(3)(A) or sec-
tion 751(d)(2) of the Act (see paragraph
(1)(1) of this section), the revocation or
termination will be effective on Janu-
ary 1, 2000. This paragraph does not
apply to subsequent sunset reviews of
transition orders (see section
751(c)(6)(A)(iii) of the Act).

(j) Revocation of countervailing duty
order based on Commission negative deter-
mination under section 753 of the Act.
The Secretary will revoke a countervailing duty order, and will order the refund, with interest, of any estimated countervailing duties collected during the period liquidation was suspended under section 753(a)(4) of the Act upon being notified by the Commission that:

(1) The Commission has determined that an industry in the United States is not likely to be materially injured if the countervailing duty order in question is revoked (see section 753(a)(1) of the Act); or

(2) A domestic interested party did not make a timely request for an investigation under section 753(a) of the Act (see section 753(a)(3) of the Act).

(k) Revocation based on Article 4/Article 7 review—(1) In general. The Secretary may revoke a countervailing duty order, in whole or in part, following an Article 4/Article 7 review under §351.217(c), due to the imposition of countermeasures by the United States or the withdrawal of a countervailable subsidy by a WTO member country (see section 751(g)(2) of the Act).

(2) Additional requirements. In addition to the requirements of §351.221, if the Secretary determines to revoke an order as the result of an Article 4/Article 7 review, the Secretary will:

(i) Conduct a verification, if appropriate, under §351.307;

(ii) Include in the final results of review, under §351.221(b)(5), the Secretary’s final decision whether the order should be revoked;

(iii) If the Secretary’s final decision is that the order should be revoked:

(A) Determine the effective date of the revocation;

(B) Publish with the notice of final results of review, under §351.221(b)(5), a notice of “Revocation of Order (in Part),” that will include the effective date of the revocation; and

(C) Order any suspension of liquidation ended for merchandise covered by the revocation that was entered on or after the effective date of the revocation, and instruct the Customs Service to release any cash deposit or bond.

(l) Revocation under section 129. The Secretary may revoke an order under section 129 of the URRA (implementation of WTO dispute settlement).

(m) Cross-reference. For the treatment in a subsequent investigation of business proprietary information submitted to the Secretary in connection with a changed circumstances review under §351.216 or a sunset review under §351.218 that results in the revocation of an order (or termination of a suspended investigation), see section 777(b)(3) of the Act.

§351.223 Procedures for initiation of downstream product monitoring.

(a) Introduction. Section 780 of the Act establishes a mechanism for monitoring imports of “downstream products.” In general, section 780 is aimed at situations where, following the issuance of an antidumping or countervailing duty order on a product that is used as a component in another product, exports to the United States of that other (or “downstream”) product increase. Although the Department is responsible for determining whether trade in the downstream product should be monitored, the Commission is responsible for conducting the actual monitoring. The Commission must report the results of its monitoring to the Department, and the Department must consider the reports in determining whether to self-initiate an antidumping or countervailing duty investigation on the downstream product. This section contains rules regarding applications for the initiation of downstream product monitoring and decisions regarding such applications.

(b) Contents of application. An application to designate a downstream product for monitoring under section 780 of the Act must contain the following information, to the extent reasonably available to the applicant:

(1) The name and address of the person requesting the monitoring and a description of the article it produces which is the basis for filing its application;

(2) A detailed description of the downstream product in question;

(3) A detailed description of the component product that is incorporated into the downstream product, including the value of the component part in relation to the value of the downstream product, and the extent to
which the component part has been substantially transformed as a result of its incorporation into the downstream product;

(4) The name of the country of production of both the downstream and component products and the name of any intermediate country from which the merchandise is imported;

(5) The name and address of all known producers of component parts and downstream products in the relevant countries and a detailed description of any relationship between such producers;

(6) Whether the component part is already subject to monitoring to aid in the enforcement of a bilateral arrangement within the meaning of section 804 of the Trade and Tariff Act of 1984;

(7) A list of all antidumping or countervailing duty investigations that have been suspended, or antidumping or countervailing duty orders that have been issued, on merchandise that is related to the component part and that is manufactured in the same foreign country in which the component part is manufactured;

(8) A list of all antidumping or countervailing duty investigations that have been suspended, or antidumping or countervailing duty orders that have been issued, on merchandise that is similar in description and use to the component part; and

(9) The reasons for suspecting that the imposition of antidumping or countervailing duties has resulted in a diversion of exports of the component part into increased production and exportation to the United States of the downstream product.

(c) Determination of sufficiency of application. Within 14 days after an application is filed under paragraph (b) of this section, the Secretary will rule on the sufficiency of the application by making the determinations described in section 780(a)(2) of the Act, and if the determination under section 780(a)(2)(A) of the Act and a determination made under any clause of section 780(a)(2)(B) of the Act are affirmative, will transmit to the Commission a copy of the determination and the application. The Secretary will make available to the Commission, and to its employees directly involved in the monitoring, the information upon which the Secretary based the initiation.

§ 351.224 Disclosure of calculations and procedures for the correction of ministerial errors.

(a) Introduction. In the interests of transparency, the Department has long had a practice of providing parties with the details of its antidumping and countervailing duty calculations. This practice has come to be referred to as a “disclosure.” This section contains rules relating to requests for disclosure and procedures for correcting ministerial errors.

(b) Disclosure. The Secretary will disclose to a party to the proceeding calculations performed, if any, in connection with a preliminary determination under section 703(b) or section 733(b) of the Act, a final determination under section 705(a) or section 735(a) of the Act, and a final results of a review under section 736(c), section 751, or section 753 of the Act, normally within five days after the date of any public announcement or, if there is no public announcement of, within five days after the date of publication of, the preliminary determination, final determination, or final results of review (whichever is applicable). The Secretary will disclose to a party to the proceeding calculations performed, if any, in connection with a preliminary results of review under section 751 or section 753 of the Act, normally not later than ten days after the date of publication of the preliminary determination, final determination, or final results of review (whichever is applicable). The Secretary will disclose to a party to the proceeding calculations performed, if any, in connection with a preliminary results of review under section 751 or section 753 of the Act, normally not later than ten days after the date of publication of the preliminary determination, final determination, or final results of review.

(c) Comments regarding ministerial errors—(1) In general. A party to the proceeding to whom the Secretary has disclosed calculations performed in connection with a preliminary determination may submit comments concerning
a significant ministerial error in such calculations. A party to the proceeding to whom the Secretary has disclosed calculations performed in connection with a final determination or the final results of a review may submit comments concerning any ministerial error in such calculations. Comments concerning ministerial errors made in the preliminary results of a review should be included in a party’s case brief.

(2) Time limits for submitting comments. A party to the proceeding must file comments concerning ministerial errors within five days after the earlier of:

(i) The date on which the Secretary released disclosure documents to that party; or

(ii) The date on which the Secretary held a disclosure meeting with that party.

(3) Replies to comments. Replies to comments submitted under paragraph (c)(1) of this section must be filed within five days after the date on which the comments were filed with the Secretary. The Secretary will not consider replies to comments submitted in connection with a preliminary determination.

(4) Extensions. A party to the proceeding may request an extension of the time limit for filing comments concerning a ministerial error in a final determination or final results of review under §351.302(c) within three days after the date of any public announcement, or, if there is no public announcement, within five days after the date of publication of the final determination or final results of review, as applicable. The Secretary will not extend the time limit for filing comments concerning a significant ministerial error in a preliminary determination.

(d) Contents of comments and replies. Comments filed under paragraph (c)(1) of this section must explain the alleged ministerial error by reference to applicable evidence in the official record, and must present what, in the party’s view, is the appropriate correction. In addition, comments concerning a preliminary determination must demonstrate how the alleged ministerial error is significant (see paragraph (g) of this section) by illustrating the effect on individual weighted-average dumping margin or countervailable subsidy rate, the all-others rate, or the country-wide subsidy rate (whichever is applicable). Replies to any comments must be limited to issues raised in such comments.

(e) Corrections. The Secretary will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination, or correct any ministerial error by amending the final determination or the final results of review (whichever is applicable). Where practicable, the Secretary will announce publicly the issuance of a correction notice, and normally will do so within 30 days after the date of public announcement, within 30 days after the date of public announcement, within 30 days after the date of publication of the preliminary determination, final determination, or final results of review (whichever is applicable). In addition, the Secretary will publish notice of such corrections in the FEDERAL REGISTER. A correction notice will not alter the anniversary month of an order or suspended investigation for purposes of requesting an administrative review (see §351.213) or a new shipper review (see §351.214) or initiating a sunset review (see §351.218).

(f) Definition of “ministerial error.” Under this section, ministerial error means an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.

(g) Definition of “significant ministerial error.” Under this section, significant ministerial error means a ministerial error (see paragraph (f) of this section), the correction of which, either singly or in combination with other errors:

(1) Would result in a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin or the countervailable subsidy rate (whichever is applicable) calculated in the original (erroneous) preliminary determination; or

(2) Would result in a difference between a weighted-average dumping margin or countervailable subsidy rate
(whichever is applicable) of zero (or de minimis) and a weighted-average dumping margin or countervailable subsidy rate of greater than de minimis, or vice versa.

§ 351.225 Scope rulings.

(a) Introduction. Issues arise as to whether a particular product is included within the scope of an antidumping or countervailing duty order or a suspended investigation. Such issues can arise because the descriptions of subject merchandise contained in the Department’s determinations must be written in general terms. At other times, a domestic interested party may allege that changes to an imported product or the place where the imported product is assembled constitutes circumvention under section 781 of the Act. When such issues arise, the Department issues “scope rulings” that clarify the scope of an order or suspended investigation with respect to particular products. This section contains rules regarding scope rulings, requests for scope inquiries, and standards used in determining whether a product is within the scope of an order or suspended investigation.

(b) Self-initiation. If the Secretary determines from available information that an inquiry is warranted to determine whether a product is included within the scope of an antidumping or countervailing duty order or a suspended investigation, the Department will initiate an inquiry, and will notify all parties on the Department’s scope service list of the initiation of a scope inquiry.

(c) By application—(1) Contents and service of application. Any interested party may apply for a ruling as to whether a particular product is within the scope of an antidumping or countervailing duty order or a suspended investigation. The application must be served upon all parties on the Department’s scope service list described in paragraph (n) of this section, and must contain the following, to the extent reasonably available to the interested party:

(i) A detailed description of the product, including its technical characteristics and uses, and its current U.S. Tariff Classification number;

(ii) A statement of the interested party’s position as to whether the product is within the scope of an order or a suspended investigation, including:

(A) A summary of the reasons for this conclusion,

(B) Citations to any applicable statutory authority, and

(C) Any factual information supporting this position, including excerpts from portions of the Secretary’s or the Commission’s investigation, and relevant prior scope rulings.

(2) Deadline for action on application. Within 45 days of the date of receipt of an application for a scope ruling, the Secretary will issue a final ruling under paragraph (d) of this section or will initiate a scope inquiry under paragraph (e) of this section.

(d) Ruling based upon the application. If the Secretary can determine, based solely upon the application and the descriptions of the merchandise referred to in paragraph (k)(1) of this section, whether a product is included within the scope of an order or a suspended investigation, the Secretary will issue a final ruling as to whether the product is included within the order or suspended investigation. The Secretary will notify all persons on the Department’s scope service list (see paragraph (n) of this section) of the final ruling.

(e) Ruling where further inquiry is warranted. If the Secretary finds that the issue of whether a product is included within the scope of an order or a suspended investigation cannot be determined based solely upon the application and the descriptions of the merchandise referred to in paragraph (k)(1) of this section, the Secretary will notify by mail all parties on the Department’s scope service list of the initiation of a scope inquiry.

(f) Notice and procedure. (1) Notice of the initiation of a scope inquiry issued under paragraph (b) or (e) of this section will include:

(i) A description of the product that is the subject of the scope inquiry; and

(ii) An explanation of the reasons for the Secretary’s decision to initiate a scope inquiry;

(iii) A schedule for submission of comments that normally will allow interested parties 20 days in which to
provide comments on, and supporting factual information relating to, the inquiry, and 10 days in which to provide any rebuttal to such comments.

(2) The Secretary may issue questionnaires and verify submissions received, where appropriate.

(3) Whenever the Secretary finds that a scope inquiry presents an issue of significant difficulty, the Secretary will issue a preliminary scope ruling, based upon the available information at the time, as to whether there is a reasonable basis to believe or suspect that the product subject to a scope inquiry is included within the order or suspended investigation. The Secretary will notify all parties on the Department’s scope service list (see paragraph (n) of this section) of the preliminary scope ruling, and will invite comment. Unless otherwise specified, interested parties will have within twenty days from the date of receipt of the notification in which to submit comments, and ten days thereafter in which to submit rebuttal comments.

(4) The Secretary will issue a final ruling as to whether the product which is the subject of the scope inquiry is included within the order or suspended investigation, including an explanation of the factual and legal conclusions on which the final ruling is based. The Secretary will notify all parties on the Department’s scope service list (see paragraph (n) of this section) of the final scope ruling.

(5) The Secretary will issue a final ruling under paragraph (k) of this section (other scope rulings) normally within 120 days of the initiation of the inquiry under this section. The Secretary will issue a final ruling under paragraph (g), (h), (i), or (j) of this section (circumvention rulings under section 781 of the Act) normally within 300 days from the date of the initiation of the scope inquiry.

(6) When an administrative review under §351.213, a new shipper review under §351.214, or an expedited antidumping review under §351.215 is in progress at the time the Secretary provides notice of the initiation of a scope inquiry (see paragraph (e)(1) of this section), the Secretary may conduct the scope inquiry in conjunction with that review.

(7)(i) The Secretary will notify the Commission in writing of the proposed inclusion of products in an order prior to issuing a final ruling under paragraph (f)(4) of this section based on a determination under:

(A) Section 781(a) of the Act with respect to merchandise completed or assembled in the United States (other than minor completion or assembly);

(B) Section 781(b) of the Act with respect to merchandise completed or assembled in other foreign countries; or

(C) Section 781(d) of the Act with respect to later-developed products which incorporate a significant technological advance or significant alteration of an earlier product.

(ii) If the Secretary notifies the Commission under paragraph (f)(7)(i) of this section, upon the written request of the Commission, the Secretary will consult with the Commission regarding the proposed inclusion, and any such consultation will be completed within 15 days after the date of such request. If, after consultation, the Commission believes that a significant injury issue is presented by the proposed inclusion of a product within an order, the Commission may provide written advice to the Secretary as to whether the inclusion would be inconsistent with the affirmative injury determination of the Commission on which the order is based.

(g) Products completed or assembled in the United States. Under section 781(a) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order imported parts or components referred to in section 781(a)(1)(B) of the Act that are used in the completion or assembly of the merchandise in the United States at any time such order is in effect. In making this determination, the Secretary will not consider any single factor of section 781(a)(2) of the Act to be controlling. In determining the value of parts or components purchased from an affiliated person under section 781(a)(1)(D) of the Act, or of processing performed by an affiliated person under section 781(a)(2)(E) of the Act, the Secretary may determine the value of the part or component on the basis of the cost of producing the part or component under section 773(f)(3) of the Act.
(h) Products completed or assembled in other foreign countries. Under section 781(b) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order, at any time such order is in effect, imported merchandise completed or assembled in a foreign country other than the country to which the order applies. In making this determination, the Secretary will not consider any single factor of section 781(b)(2) of the Act to be controlling. In determining the value of parts or components purchased from an affiliated person under section 781(b)(1)(D) of the Act, or of processing performed by an affiliated person under section 781(b)(2)(E) of the Act, the Secretary may determine the value of the part or component on the basis of the cost of producing the part or component under section 773(f)(3) of the Act.

(i) Minor alterations of merchandise. Under section 781(c) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order articles altered in form or appearance in minor respects.

(j) Later-developed merchandise. In determining whether later-developed merchandise is within the scope of an antidumping or countervailing duty order, the Secretary will apply section 781(d) of the Act.

(k) Other scope determinations. With respect to those scope determinations that are not covered under paragraphs (g) through (j) of this section, in considering whether a particular product is included within the scope of an order or a suspended investigation, the Secretary will take into account the following:

(1) The descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission.

(2) When the above criteria are not dispositive, the Secretary will further consider:

(i) The physical characteristics of the product;
(ii) The expectations of the ultimate purchasers;
(iii) The ultimate use of the product;
(iv) The channels of trade in which the product is sold; and
(v) The manner in which the product is advertised and displayed.

(1) Suspension of liquidation. (1) When the Secretary conducts a scope inquiry under paragraph (b) or (e) of this section, and the product in question is already subject to suspension of liquidation, that suspension of liquidation will be continued, pending a preliminary or a final scope ruling, at the cash deposit rate that would apply if the product were ruled to be included within the scope of the order.

(2) If the Secretary issues a preliminary scope ruling under paragraph (f)(3) of this section to the effect that the product in question is included within the scope of the order, any suspension of liquidation described in paragraph (l)(1) of this section will continue. If liquidation has not been suspended, the Secretary will instruct the Customs Service to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry. If the Secretary issues a preliminary scope ruling to the effect that the product in question is not included within the scope of the order, the Secretary will order any suspension of liquidation on the product ended, and will instruct the Customs Service to refund any cash deposits or release any bonds relating to that product.

(3) If the Secretary issues a final scope ruling, under either paragraph (d) or (f)(4) of this section, to the effect that the product in question is included within the scope of the order, any suspension of liquidation under paragraph (l)(1) or (l)(2) of this section will continue. Where there has been no suspension of liquidation, the Secretary will instruct the Customs Service to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry. If the Secretary’s final scope ruling is to the effect that the product in question is
not included within the scope of the order, the Secretary will order any suspension of liquidation on the subject product ended and will instruct the Customs Service to refund any cash deposits or release any bonds relating to this product.

(4) If, within 90 days of the initiation of a review of an order or a suspended investigation under this subpart, the Secretary issues a final ruling that a product is included within the scope of the order or suspended investigation that is the subject of the review, the Secretary, where practicable, will include sales of that product for purposes of the review and will seek information regarding such sales. If the Secretary issues a final ruling after 90 days of the initiation of the review, the Secretary may consider sales of the product for purposes of the review on the basis of non-adverse facts available. However, notwithstanding the pendency of a scope inquiry, if the Secretary considers it appropriate, the Secretary may request information concerning the product that is the subject of the scope inquiry for purposes of a review under this subpart.

(m) Orders covering identical products. Except for a scope inquiry and a scope ruling that involves section 781(a) or section 781(b) of the Act (assembly of parts or components in the United States or in a third country), if more than one order or suspended investigation cover the same subject merchandise, and if the Secretary considers it appropriate, the Secretary may conduct a single inquiry and issue a single scope ruling that applies to all such orders or suspended investigations.

(n) Service of applications; scope service list. The requirements of §351.303(f) apply to this section, except that an application for a scope ruling must be served on all persons on the Department’s scope service list. For purposes of this section, the “scope service list” will include all persons that have participated in any segment of the proceeding. If an application for a scope ruling in one proceeding results in a single inquiry that will apply to another proceeding (see paragraph (m) of this section), the Secretary will notify persons on the scope service list of the other proceeding of the application for a scope ruling.

(o) Publication of list of scope rulings. On a quarterly basis, the Secretary will publish in the FEDERAL REGISTER a list of scope rulings issued within the last three months. This list will include the case name, reference number, and a brief description of the ruling.

Subpart C—Information and Argument

§351.301 Time limits for submission of factual information.

(a) Introduction. This section sets forth the time limits for submitting factual information, as defined by §351.102(b)(21). The Department obtains most of its factual information in anti-dumping and countervailing duty proceedings from submissions made by interested parties during the course of the proceeding. Notwithstanding paragraph (b) of this section, the Secretary may request any person to submit factual information at any time during a proceeding or provide additional opportunities to submit factual information. Section 351.302 sets forth the procedures for requesting an extension of such time limits, and provides that, unless expressly precluded by statute, the Secretary may, for good cause, extend any time limit established in the Department’s regulations. Section 351.303 contains the procedural rules regarding filing (including procedures for filing on non-business days), format, translation, service, and certification of documents. In the Secretary’s written request to an interested party for a response to a questionnaire or for other factual information, the Secretary will specify the following: The time limit for the response; the information to be provided; the form and manner in which the interested party must submit the information; and that failure to submit the requested information in the requested form and manner by the date specified may result in use of the facts available under section 776 of the Act and §351.308.

(b) Submission of factual information. Every submission of factual information must be accompanied by a written explanation identifying the subsection