DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Parts 351, 353, and 355

[Docket No. 951122274–5274–01]

RIN 0625–AA45

Antidumping Duties; Countervailing Duties

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of proposed rulemaking and request for Public Comments.

SUMMARY: The Department of Commerce (''the Department'') proposes to establish regulations to conform the Department's existing antidumping duty and countervailing duty regulations to the Uruguay Round Agreements Act, which implemented the results of the Uruguay Round multilateral trade negotiations. In addition to conforming changes, the Department has sought to issue regulations that: where appropriate and feasible, translate the principles of the implementing legislation into specific and predictable rules, thereby facilitating the administration of these laws and providing greater predictability for private parties affected by these laws; simplify and streamline the Department's administration of antidumping and countervailing duty proceedings in a manner consistent with the purpose of the statute and the President's regulatory principles; and codify certain administrative practices determined to be appropriate under the new statute and under the President's Regulatory Reform Initiative.

DATES: Written comments will be due on April 29, 1996.

ADDRESSES: Address written comments to Susan G. Esserman, Assistant Secretary for Import Administration, Central Records Unit, Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230. Attention: Proposed Regulations/Uruguay Round Agreements Act. Each person submitting a comment is requested to include his or her name and address, and give reasons for any recommendation.

FOR FURTHER INFORMATION CONTACT: William D. Hunter (202) 482–1930, or Penelope Naas, (202) 482–3534.

SUPPLEMENTARY INFORMATION:

Background

In March, 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reform Initiative. This initiative is part of the National Performance review, and calls for immediate, comprehensive regulatory reform. The President directed all agencies to undertake an exhaustive review of all their regulations, with an emphasis on eliminating or modifying those that are obsolete or otherwise in need of reform. This proposed rule represents one of the steps in the Import Administration's response to the President's directive.

On January 3, 1995, the Department published an Advance Notice of Proposed Rulemaking and Request for Comments in the Federal Register (*Antidumping Duties; Countervailing Duties; Article 1904 of the North American Free Trade Agreement*, 60 FR 80 (''Advance Notice'')), as the first step in the process of developing regulations under the Uruguay Round Agreements Act (''URAA'').[1] The Department took the step of requesting comments in advance of issuing a proposed rule in order to ensure that, at the earliest possible stage, we could consider and take account the views of the private sector entities that are subject to the antidumping and countervailing duty laws.[2]

In these proposed regulations, the Department has been guided by the following objectives. First, the Department is proposing to revise the regulations to conform to the statutory amendments made by the URAA. Second, consistent with the Administration's commitment in the Statement of Administrative Action accompanying H.R. 5110 (H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994) (''SAA''), the Department has fleshed out through regulation certain statements contained in the SAA. Under section 102(d) of the URAA, the SAA constitutes an authoritative expression concerning the interpretation and application of the provisions of the URAA, including those provisions relating to antidumping and countervailing duties. Finally, the Department has developed proposed regulations mindful of President Clinton's Regulatory Reform Initiative and his directive to identify and either eliminate or modify obsolete and burdensome regulations.

The Department has carefully reviewed its existing regulations, and has taken several steps to enhance their effectiveness and make them more accessible to the business community. We have consolidated the antidumping and countervailing duty regulations (which currently are contained in separate Parts 353 and 355) into a single Part 351. Because, for the most part, antidumping and countervailing duty procedures are identical, the consolidation of those portions of the regulations dealing with procedures will make the regulations easier to use, will make it easier to identify those instances where antidumping and countervailing duty procedures differ, and, by reducing the sheer size of the regulations, will make the regulations less burdensome to the non-expert.

To the extent possible, we have proposed regulations that simplify and streamline the antidumping/countervailing duty process. For example, in the case of administrative reviews, we have added a new provision which allows, under certain circumstances, the Department to cover two review periods in a single review, an approach which should be more efficient for all parties concerned. We have attempted to harmonize, to the extent possible, the rules applicable to both the investigation and review phases of antidumping and countervailing duty proceedings. Because the maintenance of different rules for different phases of antidumping and countervailing duty proceedings merely adds another layer of complexity to an already complex area, we have attempted to eliminate needless differences. For example, in the case of correction of ministerial errors, we generally have made the procedures identical for both investigations and reviews.

In addition, we have developed rules which reduce burdens and facilitate the use of the regulations and administrative procedures. For example, we have consolidated and harmonized the rules governing the submission of information. We have reduced the

[1] Among other things, the URAA amended the antidumping and countervailing duty provisions of the Tariff Act of 1930 to conform those provisions to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (''AD Agreement'') and the Agreement on Subsidies and Countervailing Measures (''SCM Agreement''), both of which are part of the Marrakesh Agreement Establishing the World Trade Organization (''WTO Agreement'').

[2] On February 22, 1995, the Department published in the Federal Register (60 FR 9802) a notice extending until April 3, 1995, the deadline for filing final comments pursuant to the Advance Notice. In addition, on May 11, 1995, the Department published in the Federal Register (60 FR 25130) a Notice of Interim Regulations and Request for Comments (''Interim Regulations''). The Interim Regulations dealt with certain new or revised procedures resulting from the URAA that would have an immediate impact on the orderly administration of the antidumping and countervailing duty laws. Although the Department invited immediate comments on the Interim Regulations, it allowed the deadline for comments on the Interim Regulations to coincide with the deadline for comments on this proposed rulemaking.

number of copies that parties must file when they make submissions to the Department. We also have included charts which set forth in a single place the various deadlines in antidumping and countervailing duty investigations and reviews.

Further, where possible, we have proposed regulations that supplement, rather than repeat, the statute. We have included narrative explanations that put a particular regulation in context and explain how the regulation fits in the administrative process. We have also sought to use language that will be readily understood by members of the business community.

Finally, where possible, we have tried to use these regulations as a vehicle for enhancing the predictability of the antidumping and countervailing duty laws. We recognize that there are many areas in which the statute provides the Department with discretion, and we have attempted to provide guidance as to how the Department will exercise that discretion. For example, in the regulation that deals with so-called ''price averaging'' in antidumping proceedings, we have attempted to flesh out how the Department will apply this new methodology added to the law by the URAA.

In this regard, however, there are limits as to the amount of detail that the Department can provide in these regulations at this time. In some instances, the statute or the SAA already provides extremely detailed rules, thereby obviating the need for additional regulatory guidance. In other instances, the SAA expressly directs the Department to take a case-by-case approach and to eschew hard-and-fast rules. Finally, in many instances, the URAA has created new procedural and methodological issues on which the Department has little, if any, experience. Absent such experience, the Department lacks a basis for promulgating detailed rules.

Streamlining the regulations is only one part of a larger effort of the Department to simplify its practices. For example, we have been revising our standard questionnaires to make them more ''user friendly'' and efficient. We have made significant changes to our verification procedures in the interest of increased effectiveness. We also will publicly announce the issuance of Policy Bulletins and ensure that they are easily accessible to the public.

Timetable

Certain regulations dealing with the treatment of business proprietary information and administrative protective order procedures were the subject of a separate Notice of Proposed Rulemaking and Request for Public Comment on [Insert date and citation when published] (''APO Rule''). However, the Department intends that, when it publishes final regulations, it will publish a single document that will include the regulations contained in this proposed rule, as well as those regulations contained in the APO Rule.

In addition, the Department intends to publish separately proposed rules regarding countervailing duty methodology. When completed, these rules will be included as subpart E of proposed Part 351.

The issuance of final regulations on this topic is a priority for the Department. After reviewing and analyzing comments on this proposed rule and the APO Rule, the Department intends to issue final regulations as soon as possible.

Comments—In General

The Department wishes to emphasize that the regulations contained in this proposed rule reflect our best judgment at this time regarding the appropriate style and content of antidumping and countervailing duty regulations. We have not foreclosed consideration of any issue raised herein, and we would appreciate greatly public comment and suggestions. In particular, while there are certain matters on which, in our view, the statute and its legislative history give the Department relatively little flexibility, there are other matters where the Department has a much greater degree of discretion in interpreting and applying the statute. With respect to this latter category of matters, the fact that in these proposed regulations the Department has exercised its discretion in a particular manner (or has declined to exercise its discretion at all in the form of regulations) should not be construed as an indication that the Department's position on these matters is immutable. We welcome any and all suggestions.

Therefore, we are very interested in receiving public comment on these proposed regulations. We have found the dialogue that commenced with the Advance Notice to be extremely useful, and we hope and expect that it will continue. We encourage the submission of new comments, as well as the resubmission of old comments if commentators believe that the Department did not fully understand or appreciate a comment the first time around.

Comments—Format and Number of Copies

Each person submitting a comment should include his or her name and address, and give reasons for any recommendation. To facilitate their consideration by the Department, comments regarding these proposed regulations should be submitted in the following format: (1) Number each comment in accordance with the number designated for that issue as indicated in the list of issues set forth below; (2) begin each comment on a separate page; (3) concisely state the issue identified and discussed in the comment; and (4) provide a brief summary of the comment (a maximum of 3 sentences) and label this section ''summary of the comment.''

To simplify the processing and distribution of comments, the Department encourages the submission of documents in electronic form accompanied by an original and two copies in paper form. We request that documents filed in electronic form be on DOS formatted 3.5″ diskettes and prepared in either WordPerfect 5.1 format or a format that the WordPerfect program can convert and import into WordPerfect 5.1. Please submit comments on a separate file on the diskette and labeled by the number designated for that issue based upon the list of issues set forth below.

Comments received on diskette will be made available to the public on the Internet at the following addresses:

FTP://FWUX.FEDWORLD.GOV/PUB/IMPORT or

FTP://FTP.FEDWORLD.GOV/PUB/IMPORT/IMPORT.HTM

In addition, the Department will make comments available to the public on 3.5″ diskettes, with specific instructions for accessing compressed data, at cost, and paper copies will be available for reading and photocopying in the Central Records Unit, Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230. Any questions concerning file formatting, document conversion, access on the Internet, or other file requirements should be addressed to Andrew Lee Beller, Director of Central Records, (202) 482–1248.

Classification of Issues for Comment

Antidumping Issues

11. Comparison Methodology:

a. Viability, third-country sales, intermediate country sales, and tolling;

b. Constructed export price deductions and value-added deductions;

c. Normal value adjustments;
d. Level of trade matching, level of trade adjustments, and constructed export price offset;
12. Start-up
13. Profit and selling, general and administrative expenses in constructed value;
14. Sales below cost of production and constructed value generally;
15. Currency conversion;
16. Price averaging;
17. Anticircumvention;
18. Affiliated persons (address separately for AD and CVD);
19. AD methodology issues other than those outlined above;

Procedural issues

20. Initiation of petitions;
21. Evidence;
22. Facts available;
23. De Minimis (address separately for AD and CVD);
24. Reviews, other than five-year reviews (if specific to AD or CVD, please specify);
25. Five-year reviews and revocation;
26. Repeal of Section 303;
27. Regional industries;
28. Critical circumstances;
29. Simplification;
30. Business proprietary information and administrative protective orders;
31. Ministerial errors;
32. Procedural issues other than those outlined above;
33. Other issues.

Explanation of the Proposed Rules

General Background

Consolidation of Antidumping and Countervailing Duty Regulations

As discussed above, in response to the President's Regulatory Reform Initiative, to reduce the amount of duplicative material in the regulations, the Department has consolidated the antidumping and countervailing duty regulations into a new Part 351, and is removing Parts 353 and 355.

The structure of Part 351 is as follows. Subpart A (Scope and Definitions) is based on existing subpart A of Parts 353 and 355. Among other things, the regulations contained in subpart A deal with general definitions applicable to antidumping and countervailing duty proceedings, the record for such proceedings, and de minimis standards for countervailable subsidies and dumping margins.

Subpart B (Antidumping and Countervailing Duty Procedures) is based on existing subpart B of Parts 353 and 355. As suggested by the title, subpart B deals with the procedural aspects of antidumping and countervailing duty proceedings. Where the procedures for antidumping and countervailing duty proceedings are different, the regulations in subpart B so specify.

Subpart C (Information and Argument) is based on existing subpart C of Parts 353 and 355. Subpart C establishes rules for antidumping and countervailing proceedings regarding such matters as the submission of information, the treatment of proprietary information, the verification of information, and determinations based on the facts available. As noted, certain portions of Subpart C were contained in the APO Notice.

Subpart D (Calculation of Export Price, Constructed Export Price, Fair Value, and Normal Value) is based on existing subpart D of Part 353. Subpart D essentially deals with methodologies for identifying and measure dumping.

Subpart E is designated ''[Reserved],'' but, as explained above, eventually will include rules dealing with countervailing duty methodology. Subpart E does not have a counterpart in existing Part 355, although proposed methodological regulations were published in 1989. 54 FR 23366 (1989).

Subpart F (Cheese Subject to In-Quota Rate of Duty) is based on subpart D of existing Part 355, and implements section 702 of the Trade Agreements Act of 1979, as amended by the URAA.

Explanation of Particular Provisions

Part 351, Subpart A—Scope and Definitions

Subpart A of Part 351 sets forth the scope of Part 351, definitions, and other general matters applicable to antidumping and countervailing duty proceedings.

Section 351.101

Section 351.101 deals with the scope of Part 351, countervailing duty investigations involving imports from a country that is not a Subsidies Agreement country, and the application of antidumping and countervailing duties to importations by the United States Government.

Section 351.102

Section 351.102 sets forth the definition of terms that are used in antidumping and countervailing duty proceedings, but that are not defined in the statute or that warrant clarification. A few definitions merit comment.

Affiliated persons (and affiliated parties) is a new term that replaces prior definitions of ''related persons'' or ''related parties'' (the latter term continues to be governed by section 771(4)(B)). Because the statute unintentionally uses inconsistent terminology, the regulation makes clear that the terms ''affiliated person'' and ''affiliated parties'' have the same meaning. The first sentence of the definition merely refers to the definition of ''affiliated persons'' in section 771(33) of the Act. The second sentence elaborates on the meaning of ''control,'' a key term in the definition of ''affiliated persons'' under section 771(33). It reflects the statements in the SAA, at 838, that one person may be in a position to exercise restraint or direction over another person, and thus have ''control'' over that person, by such means as corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships. The definition of affiliation will also be applied for purposes of ''collapsing'' firms under section 351.401(f).

Several commentators suggested that the Department should specify precise thresholds for these indicia of control in order to provide a greater degree of predictability in the administration of the antidumping law. The Department appreciates the parties' desire for greater guidance concerning the definition of ''control.'' However, the Department does not believe that it is now in a position to establish such thresholds, but instead must develop thresholds, where appropriate, as it gains experience in applying the concept of control. ''Affiliated persons'' is a new statutory term embodying new concepts, and the complexity of the relationships potentially covered by this term mitigate against the issuance of detailed regulations at this time. Moreover, some indicia of the ability to exercise restraint or direction over another party's pricing, cost, or production decisions may not lend themselves to the use of simple, black-and-white thresholds. Therefore, the Department intends to apply this new definition on a case-by-case basis, considering all relevant factors, including the indicia included in the regulatory definition. Mere identification of the presence of one or more of these or other indicia of control does not end our task. We will examine these indicia, in light of business and economic reality, to determine whether they are, in fact, evidence of control. Business and economic reality suggest that these relationships must be significant and not easily replaced. In addition, temporary market power, created by variations in supply and demand conditions, would not suffice.

In addition, some commentators suggested that the Department should define ''control'' as existing only where

there is evidence that control previously had been exercised. We have not adopted this suggestion because the statute, by its use of the phrase ''in a position to exercise restraint or direction,'' defines ''control'' in terms of the *ability* to exercise restraint and direction. The actual exercise of restraint or direction would constitute evidence as to the existence of such *ability*.

Finally, some commentators suggested that the Department establish in the regulations that if one or more of the factors listed in section 771(33) is present, the Department should presume that the parties are affiliated. Other commentators suggested, conversely, that if certain factors are not present, the Department should presume that the parties are not affiliated. With regard to the former suggestion, the statute provides that if any one of the factors in section 771(33) is present, the Department is required to find that persons are affiliated, not merely presume that they are affiliated. With regard to the latter suggestion, the Department is required to consider evidence of any one of the factors. The only factor for which a presumption could be developed is the factor of control. However, as explained above, the Department is not yet in a position to develop such presumptions in these regulations.

Domestic interested party is a new term intended to serve as a convenient, shorthand substitute for the more lengthy phrase used in the statute (''an interested party described in paragraph (C), (D), (E), (F), or (G) of section 771(9) of the Act'') and its existing regulatory counterpart (*e.g.*, ''an interested party, as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2''). In addition, the definition of ''domestic interested party'' reflects the creation of a new category of interested party relating to processed agricultural products. Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418, section 1326(c).

The definition of *fair value* is based on existing section 353.42(a). The courts have long recognized that the Secretary possesses additional methodological flexibility in an antidumping investigation, *see, e.g., Southwest Fla. Winter Veg. Growers Ass'n* v. *United States*, 584 F. Supp. 10, 17 (Ct. Int'l Trade 1984), and the definition of fair value is intended to reflect this fact.

With respect to the definition of *ordinary course of trade*, generally, in calculating normal value, the Department must rely on sales and transactions that are in the ordinary course of trade. The first sentence of the definition refers to section 771(15) of the Act. The second sentence draws on the SAA, at 834, to elaborate on this definition, and contains examples of the types of sales or transactions that might be considered as outside the ordinary course of trade.

Some commentators urged the Department to refrain from specifying criteria to be used in determining whether sales or transactions are outside the ordinary course of trade. We agree that it would be inappropriate to include in regulations a detailed list of criteria that the Department might consider, but we also believe that there should be some guidance to the public as to how the Department will analyze ''ordinary course of trade'' issues. Accordingly, as noted above, we have incorporated the relevant language from the SAA, which provides a general description of the standard to be applied.

One commentator suggested that the Department clarify that the addition in the statute of two specific types of transactions deemed to be outside the ordinary course of trade does not affect the criteria the Department traditionally has used to determine whether other types of transactions are outside the ordinary course of trade. The second sentence of the regulatory definition addresses this concern.

Two commentators suggested that the Department identify examples of the types of sales that would be considered as being outside the ordinary course of trade, including sales at aberrational prices. The second sentence of the regulatory definition responds to these comments, although we emphasize that the second sentence is not an exhaustive list of all of the possible types of sales or transactions that might be considered as being outside the ordinary course of trade.

One commentator requested that the Department clarify that below-cost sales and affiliated transactions are not always outside the ordinary course of trade. Further clarification is not needed, because section 771(15) of the Act is clear that not all sales below cost or affiliated transactions will be deemed automatically to be outside the ordinary course of trade. Instead, only sales or transactions that are *disregarded* under the pertinent statutory and regulatory provisions automatically will be deemed to be outside the ordinary course of trade. Of course, the fact that such sales or transactions are not *automatically* considered to be outside the ordinary course of trade does not mean that they never could be considered to be outside the ordinary course of trade. For example, in the case of a below-cost sale of an ''off-spec'' product, even if the sale is not disregarded as a below-cost sale under section 773(b) of the Act, it might be disregarded as not in the ordinary course of trade due to the ''off-spec'' nature of the product.

Rates is used in these regulations as a single shorthand expression for the various terms used in the Act. In addition, the second sentence of the definition clarifies that in an antidumping proceeding involving imports from a nonmarket economy (''NME'') country, the Secretary may calculate a single dumping margin applicable to all exporters and producers. Because the government of an NME country may control export activities, the Department currently presumes that a single rate will apply, but allows individual exporters or producers to receive their own separate rates if they can demonstrate independence from the NME government. *See, e.g.*, Silicon Carbide from the People's Republic of China, 59 FR 22585 (1994).

We have decided not to codify the current presumption in favor of a single rate or the so-called ''separate rates test,'' which outlines the type of information that an exporter or producer must present to obtain a separate rate. Because of the changing conditions in those NME countries most frequently subject to antidumping proceedings, this test (and the assumptions underlying the test) must be allowed to adjust to such changes on a case-by-case basis.

The Department received comments proposing changes to the separate rates test, as well as objections to the proposed changes. Because we are codifying neither the single rate presumption nor the separate rates test, we are not addressing these comments at this time. However, we will take the comments into consideration as our policy in this area evolves.

In addition, the Department is considering whether to promulgate special rules regarding the rates that should be applied to exporters that are not also producers, such as trading companies. In this situation, one alternative would be to calculate a separate rate for each exporter/producer combination, so that the rate to be applied to an exporter would depend upon the producer of the particular merchandise in question. However, before proceeding further, the Department would like to receive additional public comment on this issue.

Respondent interested party is a counterpart to, and is intended to serve

the same function as the term ''domestic interested party.'' A respondent interested party is an interested party described in paragraph (A) or (B) of section 771(9) of the Act.

The term *segment of the proceeding* refers to discrete portions of the proceeding which are separately reviewable under section 516A of the Act. Thus, for example, an investigation and an administrative review are separate segments of a proceeding.

The term *third country* applies in antidumping proceedings, and is intended to be a shorthand expression for the more lengthy statutory phrase ''a country other than the exporting country or the United States.''

Section 351.103

Section 351.103

Section 351.103 describes the location and function of Import Administration's Central Records Unit, provides that documents must be filed with the Central Records Unit, and indicates that the Central Records Unit is responsible for maintaining the service list for each antidumping and countervailing duty proceeding.

Section 351.104

Section 351.104 defines what constitutes the official and public records of an antidumping or countervailing duty proceeding, and prohibits the removal of a record or any portion thereof unless ordered by the Secretary or required by law.

One change warranting discussion is the treatment of material returned by the Department to the submitter. The existing regulations provide that material which is not timely filed or which is returned to the submitter for some other reason shall not be retained in the official record. However, because parties have a right to seek judicial or binational panel review of a decision to reject a submission, as a matter of practice the Department has found it necessary to retain a copy of the returned materials in order to be able to document for the court or binational panel the reasons for the Department's decision to reject the submission. Therefore, paragraph (a)(2) conforms to current practice. Under paragraph (a)(2), the Department will include in the official record material that has been returned to the submitter for reasons other than untimeliness, but the Department will not use such material in its determinations. In the case of a submission rejected as untimely, it is unnecessary to retain a copy of the submission in the official record, because the timeliness/untimeliness of the submission can be documented by means other than retention of the submission.

Section 351.105

Section 351.105 defines the four categories of information applicable to antidumping and countervailing duty proceedings: public, business proprietary, privileged, and classified. One change from the existing regulations is that paragraph (c)(10) provides that the position of domestic producers or workers regarding a petition may be treated as business proprietary information. The new statute requires that the Department make an affirmative determination of domestic industry support for a petition before initiating an antidumping or countervailing duty investigation. Some domestic producers or workers might be reluctant to communicate their positions regarding a petition for fear that their positions might become public information, thereby potentially subjecting them to commercial retaliation. Accordingly, it is essential that domestic producers and workers have the option of communicating their positions to the Department on a confidential basis.

Section 351.106

Section 351.106 deals with the *de minimis* standard, and implements section 703(b)(4) and section 733(b)(3) of the Act. The Department has long applied a *de minimis* standard under which it treated net countervailable subsidies and weighted-average dumping margins that were less than 0.5 percent *ad valorem* (or the equivalent specific rate) as zero. The URAA incorporated the *de minimis* standards of the AD Agreement and the SCM Agreement into the statute, thereby modifying the prior Department standard in antidumping and countervailing duty investigations.

Consistent with the statute and the SAA, paragraph (b)(1) provides that the *de minimis* standards set forth in section 703(b)(4) and section 733(b)(3) of the Act will apply to the investigatory segment of an antidumping or countervailing duty proceeding. Although not restated in paragraph (b)(1), these statutory standards are 2 percent *ad valorem* (or the equivalent specific rate) for antidumping duty investigations, and normally 1 percent *ad valorem* (or the equivalent specific rate) for countervailing duty investigations. However, the *de minimis* standard in a countervailing duty investigation may be 2 percent if the investigated merchandise is from a developing country, or 3 percent if the investigated merchandise is from a ''least developed country'' or from a country which has phased out its export subsidies prior to the deadline established in the SCM Agreement.

Paragraph (b)(2) provides a transition rule for investigations that were initiated under pre-URAA law, suspended, and then later resumed due to a cancellation of the suspension agreement. Paragraph (b)(2) provides that in making a final determination in this situation, the Department will apply the *de minimis* standard which it would have used if the investigation never had been suspended (*i.e.*, the old law standard for investigations of 0.5 percent). However, paragraph (b)(2) has no effect on the standard which the Department may apply in determining that a suspension agreement has been violated or that a violation is ''inadvertent or inconsequential'' within the meaning of section 351.209.

The *de minimis* standards set forth in paragraph (b)(1) will apply only in antidumping or countervailing duty investigations. Paragraph (c)(1) provides that for all other antidumping or countervailing duty determinations, the *de minimis* standard will be 0.5 percent *ad valorem*, the standard set forth in existing sections 353.6 and 355.7. Several commentators suggested that the new *de minimis* standards set forth in paragraph (b)(1) should not be limited to the investigatory segment. The Department has not adopted these suggestions, because, as a matter of domestic law, the statute and the SAA are very clear that the new standards apply only to investigations. Moreover, as a matter of international law, neither the AD Agreement nor the SCM Agreement require that the new standards be applied outside of the investigatory segment.

In this regard, several commentators suggested that the Department should abandon its practice of assessing antidumping duties even when the weighted-average dumping margin was *de minimis*, arguing that (1) this practice is in conflict with the statement in the SAA, at 844, that ''*de minimis* margins are regarded as zero margins,'' and (2) a failure to apply the *de minimis* standard to assessment effectively would negate that standard. The Department agrees that the language of the SAA suggests that the *de minimis* standard should not be applied solely to cash deposits, but to assessment of duties as well. The 0.5 percent *de minimis* standard will apply to the assessment of both antidumping and countervailing duties, but, in the case of antidumping duties, the Department will apply this standard to the

''assessment rate'' calculated under new section 351.212(b)(1). As discussed in more detail below, the Department will calculate the assessment rate on an importer-by-importer basis. In situations where an exporter sells to one importer at dumped prices and to another importer at non-dumped prices, the application of the *de minimis* standard to these importer-specific assessment rates will prevent the dumped transactions from escaping the assessment of duties. With respect to the assessment of countervailing duties, the Department will continue to refrain from assessing duties where the countervailable subsidy rate (or the all-others or country-wide subsidy rate) is *de minimis.*

Subpart B—Antidumping Duty and Countervailing Duty Procedures

Subpart B deals with antidumping duty and countervailing duty procedures and is based on subpart B of Part 353 and Part 355 of the Department's existing regulations.

Section 351.201

Section 351.201 deals with the self-initiation of investigations by the Department, and is based on existing sections 353.11 and 355.11.

Section 351.202

Section 351.202 deals with the contents of, and filing requirements for, antidumping and countervailing duty petitions, and is based on existing sections 353.12 and 355.12.

Paragraph (b) is based on existing sections 353.12(b) and 355.12(b), and retains the standard that a petition need only contain information that is reasonably available to the petitioner. The following changes in paragraph (b) merit comment.

Paragraph (b)(3) is new and reflects the requirement that, before initiating an investigation, the Department must make an affirmative determination that the domestic industry supports the petition. Paragraph (b)(3) does not prescribe a single method by which a petitioner may seek to establish industry support, because the type of information establishing industry support may vary from industry to industry. However, as provided in the SAA, at 861, the petitioner must provide the volume and value of its own production of the domestic like product, as well as the production of that product by each member of the industry, to the extent that such information is reasonably available to the petitioner. In addition, the petitioner must provide information on the total volume and value of U.S. production of the domestic like product, to the extent that such information is reasonably available to the petitioner.

In paragraph (b)(7)(ii)(C)(*1*), which deals with upstream subsidy allegations, the phrase ''Countervailable subsidies, other than an export subsidy'' replaces the phrase in existing § 355.12(b)(8)(i), ''Domestic subsidies described in section 771(5). * * *'' This change reflects the URAA amendment to section 771A of the Act, which, in turn, was due to the URAA's creation of a third category of subsidies, so-called ''import substitution subsidies,'' in section 771(5)(C) of the Act.

In paragraph (b)(10), the phrase ''and causation'' has been added. Petitioners always have been required to submit information indicating that dumped or subsidized imports cause, or threaten to cause, material injury to a domestic industry. The addition of this phrase is intended simply to document this requirement.

Paragraph (b)(11), which deals with critical circumstances allegations, has been revised from existing § 353.12(b)(12) to reflect the statutory amendments regarding the elements necessary for a finding of critical circumstances.

Paragraph (e) deals with amendments to petitions, and is based on existing §§ 353.12(e) and 355.12(e). In the first sentence, ''may'' has been substituted for ''will'' in order to more accurately reflect the discretion that the statute confers on the Department regarding the acceptance of amendments to petitions.

Paragraph (i) is based on existing §§ 353.12(i) and 355.12(j), but has been revised to reference sections 702(b)(4)(B) and 733(b)(3)(B) of the Act, which now deal expressly with the issue of pre-initiation communications between the Department and outside parties. The last sentence of paragraph (i)(1) clarifies that the Department will not consider the filing of a notice of appearance in an antidumping or countervailing duty proceeding to constitute a communication. However, if any communication is appended to a notice of appearance on any subject other than industry support, the Department will consider the entire document to be prematurely filed. In addition, paragraph (i)(2) provides that, in a countervailing duty proceeding, the Department will take the initiative and ''invite'' the government of the exporting country involved for consultations, instead of taking a more passive approach and merely providing an opportunity for consultations.

Several commentators suggested that the Department should solicit comments regarding the petition, such as comments concerning the accuracy of the information contained in the petition. However, the SAA, at 863–64, states that ''the pre-initiation right to comment will be limited solely to the issue of industry support for the petition.'' Thus, the legislative intent was to prohibit the type of communication contemplated by these commentators, and it would contravene this intent if the Department were to allow parties to submit such information by ''requesting'' parties to provide it.

Section 351.203

Section 351.203 deals with determinations regarding the sufficiency of a petition, and implements sections 702(c) and 732(c) of the Act. While based on existing §§ 353.13 and 355.13, § 351.203 contains several changes that reflect amendments to the statute.

Paragraph (b)(1) provides that the Department normally will make the determination regarding the sufficiency of a petition within 20 days of the date on which the petition is filed. In this regard, paragraph (b)(1) repeats the language of the statute with respect to the determination concerning the ''accuracy and adequacy'' of a petition. The Department does not believe that the new statutory standard constitutes a significant departure from past Department practice.

Paragraph (b)(1) reflects the new statutory requirement that the Department examine sources readily available to it in determining the sufficiency of a petition. In the past, it was the Department's practice, in reviewing a petition, to note information that lacked sufficient support or that appeared aberrational, and to ask the petitioner to provide additional information. This practice is consistent with the type of review contemplated by the new statute. Under paragraph (b)(1), the Department will seek information from sources other than the petitioner where: (1) Support for a particular allegation is weak, but better information is unavailable to the petitioner, particularly where the allegation is central to the adequacy of the petition or has a significant impact on the alleged rates, or (2) the information, although supported, appears aberrational and is central to the adequacy of the petition or has a significant impact on the alleged rates. The Department will give the petitioner an opportunity to comment on any such information acquired by the Department.

In this regard, the use of information ''readily available'' is intended to mean information that does not require extensive research by the Department to

obtain. An example of such information would be the replacement of a significant factor of production value in a nonmarket economy antidumping petition with non-proprietary information used in a recently completed investigation or review.

With respect to injury and causation, given the bifurcated responsibilities of the Department and the Commission under the Act, the Department will continue to work in cooperation with Commission staff in evaluating a petition.

Paragraph (b)(2) deals with situations in which the Department extends the period for determining the sufficiency of a petition in order to poll or otherwise determine industry support for a petition. Under paragraph (b)(2), the Department will extend the period only by the amount of time required to gather and analyze information relevant to the question of industry support, and in no case will the Department exceed the maximum period of 40 days authorized by the statute.

Paragraph (c)(2) is new and incorporates the requirements of the SAA, at 867, regarding the distribution of a public version of a petition once the Department has made a determination to initiate an investigation. Normally, the Department will provide a public version of the petition to all known exporters. However, in accordance with the SAA, at 867, where the number of exporters is very large, the Department may provide a copy of the petition to a trade association, with instructions to provide copies to all exporters. Alternatively, the Department may consider this obligation 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). In the latter case, the Department will notify the government in question that its obligation has been met through such delivery. In addition, to conserve resources, the Department is looking into the feasibility of making the petition available on computer diskette.

Paragraph (e) is new and deals with the new statutory requirements regarding determinations of industry support for a petition. Paragraph (e)(1) deals with the measurement of domestic production, an important issue in light of the fact that expressions of support or opposition for a petition are weighted according to production. Consistent with the SAA, at 862, paragraph (e)(1) provides that the Department may measure production on the basis of volume or value. In addition, in order to provide a degree of predictability, paragraph (e)(1) also provides that the Department normally will measure production over a twelve-month period. Because in certain cases some period other than twelve months may be more appropriate, the Secretary retains the discretion to prescribe the precise period on a case-by-case basis. However, normally the Secretary will use the most recent twelve-month period for which data are available.

The second sentence of paragraph (e)(1) provides that where the Department is satisfied that actual production data for the relevant period is not available, production levels may be established on the basis of alternative data that the Department determines to be indicative of production levels. For example, for some industries or firms, shipment data may correspond directly with production data, and, thus, be a reliable alternative. However, because of the vast array of industries that appear before it, the Department has not attempted to specify data that would be an acceptable surrogate in all cases for production data.

Paragraph (e)(2) provides that the expression of a position regarding a petition may be treated as business proprietary information under § 351.105(c)(10), discussed above. Several commentators expressed concern that, if parties were required to state publicly their position regarding a petition, they could face commercial retaliation. Therefore, business proprietary treatment may be necessary in order to encourage domestic producers and workers to present their candid views regarding a petition.

Paragraph (e)(3) sets forth rules regarding the weight accorded to the positions of workers and management regarding a petition. Consistent with the SAA, at 862, an opinion expressed by workers will be considered to be of equal weight to an opinion expressed by management. Thus, for example, if a union expressed support for a petition, the Department would consider that support to be equal to the production of all of the firms that employ workers belonging to the union. On the other hand, if management and workers at a particular firm expressed opposite views with respect to a petition, the production of that firm would be treated as representing neither support for, nor opposition to, the petition.

Paragraph (e)(4) reflects sections 702(c)(4)(B) and 734(c)(4)(B) of the Act and the SAA, at 858–859, which allow the Department to disregard, in certain situations, opposition to a petition by certain domestic producers. Paragraph (e)(4)(i) clarifies that a ''related'' domestic producer includes a domestic producer related to a foreign *exporter*, as well as a domestic producer related to a foreign *producer*. In this regard, the Department believes that the statutory requirement that the Department ''shall'' ignore the opposition of related domestic producers ''unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected'' puts the burden of demonstrating such an effect on those producers. Paragraph (e)(4)(ii) clarifies that the Department *may* disregard the views of domestic producers who are also importers of the subject merchandise and domestic producers who are related to such importers within the meaning of section 771(4)(B)(ii) of the Act. In evaluating whether to disregard such producers, the Department may consider the import levels and percentage of ownership common to other members of the domestic industry.

Paragraph (e)(5) deals with the question of industry support where the petition alleges the existence of a regional industry under section 771(4)(C) of the Act. The SAA, at 863, states that industry support shall be assessed ''on the basis of production in the alleged region.'' Consistent with this statement, paragraph (e)(5) provides that, for purposes of assessing industry support, the applicable region will be the region specified in the petition.

Paragraph (e)(6) deals with situations in which the Department may have to poll the industry in order to determine whether the industry supports a petition. Paragraph (e)(6) clarifies that in conducting such a poll, the Department will include in the poll unions, groups of workers, and trade and business associations.

Paragraph (f) interprets sections 702(c)(1)(C) and 732(c)(1)(C) of the Act, which provide for expeditious investigations involving subject merchandise that previously was covered by an order that was revoked or a suspended investigation that was terminated. Paragraph (f) clarifies that these provisions of the Act apply if the revocation or termination occurred under a pre-URAA version of the statute.

Section 351.204

Section 351.204 deals with issues relating to the transactions and persons to be examined in an investigation, voluntary respondents and exclusions. Paragraph (b) deals with the period of time covered by an investigation (''POI''). In a departure from existing § 353.42(b), paragraph (b)(1) provides that the POI in an antidumping investigation normally will be the four most recently completed fiscal quarters (or, in a case involving a nonmarket

economy, the two most recently completed fiscal quarters) as of the month preceding the month in which a petition is filed or in which the Department self-initiated an investigation. The use of fiscal quarters is intended to ease reporting requirements and permit more efficient verification of submitted information. However, paragraph (b)(1) would permit the Department to use an additional or alternative period in appropriate circumstances. Paragraph (b)(2) codifies existing practice regarding the POI in countervailing duty investigations.

Paragraph (c) deals with the selection of the exporters and producers to be examined. In light of section 777A(c) of the Act, paragraph (c) does not retain the 60 and 85 percent thresholds of existing § 353.42(b). Additionally, paragraph (c) permits the Department to decline to examine a particular exporter or producer where all parties agree. Such exporter or producer will be subject to the all-others rate, where such a rate is calculated.

Paragraph (d) deals with the treatment of voluntary respondents under section 782(a) of the Act. Through its reference to section 777A(e)(2)(A) of the Act, paragraph (d)(1) provides that the Department will not consider voluntary respondents in investigations conducted on an aggregate basis under section 777A(e)(2)(B) of the Act. As discussed below, however, in so-called ''aggregate cases,'' the Department will consider requests for exclusion under paragraph (e)(3) by individual exporters or producers. Paragraph (d)(2) provides that if the Department accepts a voluntary response, the voluntary respondent will be subject to the same requirements as those firms initially selected by the Department for individual examination, including, where applicable, the use of the facts available. The purpose of this provision is to ensure that the Department is not burdened with frivolous voluntary responses from parties that wish to see the preliminary all-others rate before deciding whether to withdraw their request to be investigated. Finally, paragraph (d)(3) provides for the exclusion of voluntary respondents from the calculation of the all-others rate. The purpose of this provision is to prevent manipulation and to maintain the integrity of the all-others rate.

Paragraph (e) deals with exclusions and constitutes a significant change from prior practice, as reflected in §§ 353.14 and 355.14. With the exception of countervailing duty investigations conducted on an aggregate basis, paragraph (e)(1) eliminates the various certification requirements of the prior regulations and, instead, provides that any exporter or producer that is individually examined and that receives an individual weighted-average dumping margin or countervailable subsidy rate of zero or *de minimis* will be excluded from an order.

In this regard, the Department is considering whether there should be separate exclusion rules for firms, such as trading companies, that sell, but do not produce, subject merchandise. For example, one alternative would be to limit the exclusion of a non-producing exporter to subject merchandise produced by those producers that supplied the exporter during the period of investigation. However, before issuing final rules, the Department is interested in receiving additional public comments regarding this issue.

Paragraph (e)(2) clarifies that, while no exporter will be excluded from an investigation as a result of a preliminary determination, those found to have zero or *de minimis* rates will not be subject to provisional measures.

Paragraph (e)(3) explains that, where a countervailing duty investigation is conducted on an aggregate basis under section 777A(e)(2)(B) of the Act, individual responses will be accepted for purposes of establishing exclusion. However, consistent with section 782(a)(2) of the Act, the number of such responses must not be so large that individual examination of such exporters or producers would be unduly burdensome and inhibit the timely completion of the investigation. Responses submitted in support of a request for exclusion must include a certification that the party received zero or *de minimis* net countervailable subsidies and a calculation demonstrating the basis for that conclusion. Additionally, because the countervailable subsidy rate for a reseller normally is based on the producer's rate, an exporter that is not the producer of subject merchandise must provide a certification from the suppliers or producers of the merchandise that the exporter sold during the period of investigation, stating that those persons also received zero or *de minimis* net countervailable subsidies. Finally, an exporter or producer seeking exclusion also must submit a certification from the government that the government did not provide the firm with net countervailable subsidies above *de minimis.* An exporter or producer requesting exclusion may be required to provide more detailed information regarding the nature and amount of any countervailable subsidies received. If the Department determines that an exporter or producer seeking exclusion has received net countervailable subsidies above *de minimis,* that firm will not be excluded from a countervailing duty order and will be subject to the country-wide subsidy rate.

Section 351.205

Section 351.205 deals with preliminary antidumping and countervailing duty determinations, and is based on existing sections 353.15 and 355.15.

Section 351.206

Section 351.206 deals with critical circumstances findings, and is little changed from existing §§ 353.16 and 355.15. However, the reader should note that the statutory prerequisites for a finding of critical circumstances have changed. *See* sections 705(a)(2) and 735(a)(3) of the Act.

Section 351.207

Section 351.207 deals with the termination of investigations, something that typically occurs through a withdrawal of the petition. Section 351.207 is based on existing §§ 353.17 and 355.17, and the principal changes are: (1) the last sentence of paragraph (b)(1) contains a cross-reference to the statutory and regulatory provisions that deal with the treatment in a subsequent investigation of records compiled in an investigation in which the petition is withdrawn; and (2) paragraph (c) references the Department's authority, pursuant to section 782(h)(1) of the Act, to terminate an investigation due to lack of interest. As the SAA, at 864, makes clear, the Department's authority to carry out a no-interest termination is unaffected by those provisions of the statute prohibiting the post-initiation reconsideration of industry support for a petition.

Section 351.208

Section 351.208 deals with suspension agreements and suspended investigations, and is based on existing §§ 353.18 and 355.18. The most significant changes reflected in § 351.208 relate to the new statutory provisions regarding suspension agreements in regional industry cases (paragraphs (f)(1)(ii), (f)(2)(ii), and (f)(3)). In this regard, paragraphs (f)(1)(ii) and (f)(2)(ii) address situations in which the Commission finds a regional industry in its final determination, but not in its preliminary determination. If the Commission finds a regional industry in its preliminary determination, the Secretary still could accept a regional industry suspension

agreement under section 704(l) and section 734(m) of the Act, but the procedures and deadlines in paragraphs (f)(1)(i) and (f)(2)(i) would apply. In addition, it should be noted that paragraph (f)(2) lists some, but not all, of the procedural steps required by the Act with respect to the suspension of an investigation.

In addition, the deadlines for initialling and signing suspension agreements have been advanced. Under current practice, consideration of a suspension agreement and briefing and drafting of comments in preparation for a final determination occur simultaneously, thereby creating an enormous burden on parties and on the Department. The proposed rule allows parties to propose a suspension agreement within 15 days of a preliminary antidumping determination, or within 5 days of a preliminary countervailing duty determination. In an antidumping investigation, parties may also request an extension of the final determination. An extension will not affect the time allotted for consideration of a suspension agreement, only the time allotted for preparation of the final determination. In a countervailing duty investigation, the period for consideration of a suspension agreement would be expedited because no extension of the final determination is possible, unless the investigation is aligned with a companion antidumping investigation or an upstream investigation is initiated. While the suspension agreement is under consideration, the briefing and hearing schedule would be postponed. The proposed timeline will reduce burdens on all parties by eliminating the need to file case briefs, rebuttal briefs, and to participate in a hearing, if a suspension agreement is accepted.

Section 351.209

Section 351.209 deals with the violation of suspension agreements. Although § 351.209 is largely identical to existing §§ 353.19 and 355.19, there are a few changes worth noting. First, in several places, the term ''a signatory'' has been substituted for ''exporters.'' This change from the plural to the singular is intended to clarify that the actions of a single signatory can constitute a violation of a suspension agreement.

Second, paragraph (b)(2) provides that if, as a result of a violation, the Department resumes a suspended investigation that had not been completed under sections 704(g) or 734(g) of the Act, the Department may update previously submitted information, where appropriate, for purposes of making a final determination. For example, if a considerable amount of time has passed since the POI of the original investigation or if there have been significant changes in market circumstances, it might be inappropriate to make a final determination on the basis of dated information. This issue has arisen in prior cases, and paragraph (b)(2) is intended to clarify the Department's authority to seek updated information in these types of situations.

Section 351.210

Section 351.210 deals with final determinations in investigations, and is little changed from existing §§ 353.20 and 355.20. One change worth noting is that because the URAA eliminated the preference for a country-wide rate in countervailing duty investigations, § 351.210 lacks a provision comparable to existing § 355.20(d).

Section 351.211

Section 351.211 deals with the issuance of antidumping duty and countervailing duty orders, and is based on existing §§ 353.21 and 355.21. The most significant new provision is paragraph (c), which implements sections 706(c) and 736(d) of the Act regarding the coverage of orders issued in investigations where the Commission has identified a regional industry. Paragraph (c) establishes procedures by which an exporter or producer that did not supply the region during the POI may be excepted from the assessment of duties.

Section 351.212

Section 351.212 is new, and deals with matters related to the assessment of antidumping and countervailing duties. Although portions of § 351.212 are based on provisions of the Department's current regulations, other portions are entirely new.

Paragraph (b) deals with the assessment of duties as the result of a review. Paragraph (b)(1) establishes rules regarding the assessment of antidumping duties. By way of background, when the Department assumed responsibility for the administration of the antidumping law in 1980, it inherited from its predecessor, the U.S. Customs Service, the practice of issuing assessment instructions in the form of so-called ''master lists.'' Typically, a master list would list each entry (or each shipment). Over time, the Department encountered numerous problems in creating master lists. For example, because dumping margins are calculated on the basis of sales, the creation of a master list requires the ability to link each U.S. sale to a corresponding customs entry. Frequently, this is an impractical task for both the Department and exporters and importers. For example, if sales are made after importation, the U.S. affiliate (or consignee) of the foreign exporter usually will not maintain records that link each sale to an unaffiliated customer to a corresponding customs entry. Similarly, when the Department examines sales by a foreign producer to intermediaries outside the United States, such as foreign trading companies, the producer normally does not have the information that would allow the Department to identify the specific customs entries that correspond to specific sales to the intermediaries.

This inability to link sales to entries also has prevented the Department from conducting reviews on the basis of merchandise entered during a particular review period. Where this type of problem exists, the Department has been forced to define review periods on the basis of shipments or sales during the period.

One method of dealing with this problem would be to require respondents to maintain records in such a way that sales can be linked to entries. However, such a requirement would impose a burden on respondents that would be disproportionate to the minor gains in the precision of duty assessments, and simply would render an already complex process even more complex. Therefore, commercial reality and the need to streamline the administration of the antidumping law have caused the Department to rely on the use of duty assessment rates instead of entry-by-entry master lists. In the interests of clarity and predictability, we believe that this practice should be codified in the regulations.

With respect to the use of duty assessment rates, the Department believes that, except in unusual situations, we should assess duties on subject merchandise entered during each review period. Therefore, paragraph (b)(1) provides that the Department normally will calculate a duty assessment rate based on sales reviewed, and will apply those rates to entries made during the review period. In all cases, this will result in the assessment of duties on merchandise entered during the review period. To the extent possible, these assessment rates will be specific to each importer, because the amount of duties assessed should correspond to the degree of dumping reflected in the price paid by each importer. Where possible, we will

base assessment rates on the entered value of the sales examined in the review. If entered values are not available, it may be necessary to use unit rates.

For example, assume that a U.S. importer (affiliated with the foreign exporter) sells after importation two different products, A and B, both of which are subject to an antidumping order. The Department reviews sales totalling 100 tons of product A and 200 tons of product B. The entered value of the merchandise during the review period was $40 per ton for product A and $30 per ton for product B. The absolute dumping margin found for all of the sales was $100. In this example, the assessment rate would be 10 percent [($100/($40x100 + $30x100) = 10 percent]. Put differently, it is the rate of dumping reflected in these sales relative to the entered value of the merchandise. We would collect antidumping duties on merchandise entered during the review period by applying this 10 percent rate to the entered value of each of those entries.

The Department believes that, except in unusual situations, it should not abandon the objective of assessing duties on the basis of entries, even when it is not possible to precisely link sales to entries. In most antidumping proceedings, it is necessary to assess duties on the basis of entries in order to maintain continuity with periods of no review and to avoid the over- or undercollection of duties. Moreover, because we typically cannot link sales to entries, we currently have no means of collecting precisely an amount of duties equal to the total absolute dumping margin calculated for the sale reviewed. This would require exact knowledge, for each importer, as to the total quantity or value of unliquidated entries during the review period, information that often is difficult or impossible to obtain.

The Department intends to continue to use master lists in situations where there are few shipments, and to assess duties on the basis of merchandise sold or shipped if warranted by the pattern of imports and sales. We also will evaluate the effect of reconciliation entries, which are authorized by the Customs Modernization Act, on the duty assessment process, and we may collect duties on the basis of merchandise sold or shipped if a reconciliation entry is used.

Paragraph (b)(2) deals with the assessment of countervailing duties, and is consistent with current practice.

Paragraph (c) deals with the automatic assessment of duties in situations where an administrative review of an order under § 351.213 is not requested, and is based on existing §§ 353.22(e) and 355.22(g). Paragraph (c)(3) is new, and provides that automatic assessment will not occur, even though an administrative review is not requested, if the merchandise in question is subject to a new shipper review under § 351.214 or an expedited antidumping review under § 351.215.

Paragraph (d) deals with the provisional measures deposit cap, and is based on existing §§ 353.23 and 355.23. The language of paragraph (d) has been revised to reflect the new concept of assessment rates in paragraph (b). Finally, paragraph (e) deals with interest on over- and underpayments of estimated duties, and is little changed from existing §§ 353.24 and 355.24.

Section 351.213

Section 351.213 deals with administrative reviews under section 751(a)(1) of the Act. Section 351.213 is based largely on existing §§ 353.22 and 355.22, but certain changes are worth noting.

Paragraph (c) establishes a new procedure by which the Secretary, upon request, may defer the initiation of an administrative review for one year. The purpose of this provision is to simplify the review process and reduce the burden on all concerned by allowing the Department, in effect, to cover two review periods in a single review. However, the Secretary will not defer an administrative review if one of the parties identified in the regulation objects to deferral.

Paragraph (d) deals with the rescission (previously referred to as ''termination'') of administrative reviews, and clarifies that the Department may rescind a review that the Secretary self-initiated or in which there are no entries, exports, or sales to be reviewed.

Paragraph (e)(2) codifies existing practice regarding the period of review for countervailing duty administrative reviews, and is similar, but not identical, to the period covered by investigations under § 351.204(b)(2).

Paragraph (f) deals with the treatment of voluntary respondents in administrative reviews, and provides that voluntary respondents will be treated in the same manner as in an investigation.

Paragraph (g) cross-references new § 351.221, a new provision which consolidates in one place the procedures to be applied in the different types of reviews provided for by the Act.

Paragraph (h) sets forth deadlines for issuing preliminary and final results of administrative reviews, and also provides for extensions to those deadlines.

Paragraph (j) establishes procedures for the analysis of the absorption of antidumping duties under section 751(a)(4) of the Act. The Department will make a determination regarding duty absorption in administrative reviews initiated in the second and fourth years after the issuance of an antidumping order. In addition, if an order remains in existence following a sunset review under section 751(c) of the Act, the Department will make a duty absorption determination in the second and fourth years following the Department's determination in the sunset review. However, the Department will make a determination regarding duty absorption only if a request for such a determination is made within 30 days of the initiation of the administrative review. For transition orders, reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year.

Paragraph (k) deals with administrative reviews of countervailing duty orders that are conducted on an aggregate basis. Paragraph (k)(1) establishes a procedure under which an individual exporter or producer may seek a zero rate. This procedure is modeled on § 351.204(e)(3), discussed above, which deals with requests for exclusion in countervailing duty investigations conducted on an aggregate basis. As with requests for exclusion, the Secretary will consider requests for zero rates to the extent practicable. Paragraph (k)(2) provides that, where an administrative review of a countervailing duty order is conducted on an aggregate basis, the country-wide rate calculated in such a review, if any, will supersede, for cash-deposit purposes, rates calculated in a prior segment of the proceeding, with the exception of zero rates determined under paragraph (k)(1).

Section 351.214

Section 351.214 sets forth the procedures for conducting new shipper reviews, a new procedure contained in section 751(a)(2) of the Act. This section also establishes a procedure for conducting an expedited review of exporters that are not individually examined in countervailing duty investigations. Certain features of § 351.214 merit discussion.

Paragraph (b) sets forth the procedures for requesting a new shipper review. Under paragraphs (b)(1), (b)(2), and (b)(3), the requester must provide certifications demonstrating that the

party is a *bona fide* new shipper. The purpose of these certifications is to ensure that new shipper status is not achieved through mere restructuring of corporate organizations or channels of distribution. In accordance with the SAA, at 875, this provision also makes clear that parties will not be granted new shipper status merely because they were not individually examined during the investigation.

Paragraph (b)(4) requires the requesting party to document the entry date of the shipment which establishes the basis for the new shipper review, as well as the date of the first sale to an unaffiliated customer in the United States. If the requesting party cannot provide such information it may, in the alternative, provide documentation establishing the date on which the merchandise was shipped. The date of first entry (or the date of shipment) will be used to establish the timeliness of the request for a new shipper review under § 351.214(c).

In the case of a countervailing duty order, paragraph (b)(5) requires the requesting party to certify that it has informed the government of the exporting country that the government will be required to provide a full questionnaire response. This requirement is intended to put parties on notice that, in a review of a countervailing duty order, the party will have to have the cooperation of the government. By requiring at the outset a certification that the government has been put on notice of the review, the Department hopes to minimize situations in which it will be forced to rely upon the facts available.

Paragraph (c) clarifies that a request for a new shipper review must be submitted no later than one year after the date of the first shipment to the United States. By setting this deadline, the Department clarifies that the statute is intended to provide a new shipper an opportunity to obtain its own rate on an expedited basis, and not to permit shippers to request expedited reviews long after the first shipment has taken place.

Paragraph (d) deals with the time for initiating new shipper reviews, and provides an illustrative example. Paragraph (f) permits the Secretary to rescind a new shipper review upon the request of the new shipper made within 60 days of the initiation of the review. In addition, the Secretary may rescind a new shipper review if the Secretary concludes that: (i) There were no entries, exports, or sales (as appropriate) during the standard period of review for a new shipper review, and (ii) an expansion of the standard period to include entries, exports, or sales would prevent the timely completion of the new shipper review. This might occur, for example, in an antidumping proceeding where a new shipper exports merchandise to an affiliated U.S. importer, but the importer does not resell the merchandise to an unaffiliated U.S. purchaser within the standard period of review. Although the Secretary would have the discretion to expand the period of review to cover a subsequent resale, if the merchandise has not been resold within a reasonable period of time following the end of the standard review period, the Secretary could rescind the new shipper review. The new shipper still would have the option of requesting a new shipper review if and when the merchandise was resold.

Paragraph (g) deals with the period of review. New shipper reviews in antidumping proceedings normally will cover a period of six months or one year, depending on whether the review was initiated following the anniversary month or the semiannual anniversary month. In a countervailing duty proceeding, the period of review will be the same as in an administrative review. However, because of the novelty of the new shipper review procedure, the period of review may change as the Department gains experience in this area. It is the Department's intent to apply paragraph (g) in a flexible manner so that the Department may expand the standard period of review to cover the first exportation of a new shipper, provided that any such expansion of the period of review does not prevent the completion of the review within the statutory time limits.

Because new shipper reviews may be requested at any time, but are initiated only at six-month intervals, the Department may find that the Customs Service has liquidated the relevant entries based upon instructions issued under the automatic assessment provisions of § 351.212(c). Although the Department may be forced to review entries that already have been liquidated, this should not be interpreted as a change in the Department's general policy of refusing to conduct administrative reviews of liquidated entries.

Paragraph (h) cross-references section 351.221, which, as discussed above, contains procedural rules for the various types of reviews conducted by the Department. Here, we should note that under § 351.221(b)(6), the results of review will form the basis for the assessment of duties on unliquidated entries. Some commentators have argued that the Department should exclude a new shipper from an order if the Department determines in a new shipper review a zero or *de minimis* rate. The Department has not adopted this suggestion for the following reasons. Section 751(a)(2) implements obligations arising under both the AD Agreement and the SCM Agreement, but during the Uruguay Round negotiations, the subject of new shippers was negotiated primarily in connection with the AD Agreement. The negotiating history of the AD Agreement indicates that while a proposal was made regarding the exclusion from an order of new shippers found to be selling at non-dumped prices, this proposal was not included in the final AD Agreement. Thus, the purpose of the new shipper review procedure merely was to provide an expedited review of imports already considered to be subject to an order. We note that we invite comment on our proposal to change the rules governing revocation, § 351.222, and that these rules apply to new shippers.

Finally, paragraph (j) addresses situations in which a new shipper may be subject to more than one review or more than one request for review. For example, a new shipper might request a new shipper review notwithstanding the fact that the new shipper is already subject to an administrative review under § 351.213. To minimize the potential for confusion and to conserve administrative resources, paragraph (j) permits the Department to terminate a review, in whole or in part, including a new shipper review. Paragraph (j) also would permit the Department to conduct an administrative review under § 351.213 of less than the normal one year review period. Paragraph (j) also permits the Department to conduct a new shipper review concurrently with an administrative review under section 351.213, if the new shipper is willing to waive the time limits for a new shipper review set forth in paragraph (i). If a new shipper waives the time limits, all other provisions of § 351.214, including the bonding provision of paragraph (e), will continue to apply for the duration of the new shipper review.

To implement Article 19.3 of the SCM Agreement, paragraph (k) expands the new shipper review procedure to cover exporters that were not individually examined in a countervailing duty investigation where the Secretary limited the investigation under section 777A(e)(2)(A) of the Act. There are a few important differences between this procedure and the procedure for a regular new shipper review. First, to allow the Department to manage its limited resources efficiently, a noninvestigated exporter desiring an

expedited review must file a request within 30 days of the publication of a countervailing duty order. This is a reasonable time limit, because a noninvestigated exporter will be aware of its status long before an order is published. Second, because the noninvestigated exporter does not qualify as a new shipper, the Secretary will not permit a bond to be substituted for a cash deposit of estimated duties.

Section 351.215

Section 351.215 deals with expedited antidumping reviews under section 736(c) of the Act. But for stylistic and formatting changes, section 351.215 is unchanged from existing § 353.22(g).

Section 351.216

Section 351.216 deals with changed circumstances reviews under section 751(b) of the Act. Again, except for stylistic and formatting changes, this provision is unchanged from existing §§ 353.22(f) and 355.22(h).

Section 351.217

Section 351.217 deals with reviews under section 751(g) of the Act. Section 751(g) establishes a mechanism for reviewing a countervailing duty order to take account of the outcome of a subsidies-related WTO dispute.

Section 351.218

Section 351.218 deals with sunset reviews under section 751(c) of the Act. In accordance with section 751(c), paragraph (c) provides that the Department will publish a notice of initiation no later than 30 days before the fifth anniversary date of an order or suspended investigation. As described in the SAA, at 882, the Department may initiate a sunset review at an earlier date, at the request of a domestic interested party. The purpose of this provision is to enable the Commission to conduct a cumulative injury analysis. However, if the Department determines that the party requesting an early sunset review is related to a foreign exporter or producer or is an importer (or is related to an importer) within the meaning of section 771(4)(B) of the Act and § 351.203(e)(4), the Department may decline such a request.

With respect to sunset reviews, the Department would like to remind parties that section 751(c)(3)(A) of the Act requires the Department to make a final sunset determination within 90 days of the notice of initiation if no domestic interested party responds to the notice of initiation. Therefore, once the Department publishes a notice of initiation of a sunset review, parties will receive no further notice of the review unless and until they provide such information.

Section 351.219

Section 351.219 deals with section 753 of the Act. In general, section 753 of the Act provides a mechanism for providing an injury test in the case of countervailing duty orders that (i) pertain to a Subsidies Agreement country, and (ii) were issued under section 303 of the Act without an injury test. Under section 753, upon request, the Commission will conduct an investigation to determine if a U.S. industry is likely to be materially injured if a countervailing duty order is revoked. If the Commission's determination is negative, or if no request for an investigation is received, the Department will revoke the order.

Section 351.219 differs from § 355.40, which the Department issued as an interim-final rule on May 11, 1995 (60 FR 25130, 25139). The principal change is that we have eliminated provisions that merely repeated the language of section 753. However, consistent with the SAA, at 942–943, paragraph (b) continues to provide that the Secretary will notify domestic interested parties as soon as possible after the opportunity for requesting a section 753 investigation arises.

Section 351.220

Section 351.220 deals with reviews conducted at the request of the President under section 762 of the Act. But for stylistic and formatting changes, § 351.220 is unchanged from existing § 355.22(i).

Section 351.221

Section 351.221 consolidates in one section the procedural actions that the Department will take with respect to the various types of reviews provided for under the Act. Paragraph (b) is in the nature of a generic provision, and is based on existing §§ 353.22(c) and 355.22(c). Paragraph (c) contains special rules for particular types of reviews.

Section 351.222

Section 351.222 deals with the revocation of orders and termination of suspended investigations.

Paragraph (b), which deals with revocation or termination based on the absence of dumping, is substantively unchanged from existing § 353.25(a). Paragraph (c) retains the current requirements (found in § 355.25(a)) for revocation or termination based on the absence of countervailable subsidies. As provided in § 351.213(e) and § 351.204(d), the Department generally will not consider voluntary respondents in an administrative review of a countervailing duty order that is conducted on an aggregate basis under section 777A(e)(2)(B) of the Act. However, the requirements for a company-specific revocation set forth in paragraph (c)(3) may be satisfied in a proceeding conducted on an aggregate basis by the submission of certifications that the company received zero or *de minimis* countervailable subsidies. See § 351.222(e)(2)(iii). As in the case of exclusions, the Department is considering whether there should be separate revocation rules for firms, such as trading companies, that sell, but do not produce, subject merchandise. One alternative would be to limit the revocation of a non-producing exporter to subject merchandise produced by those producers that supplied the exporter prior to revocation. However, before issuing final rules, the Department is interested in receiving additional public comments regarding this issue.

Under the current regulations, a company must have been the subject of three (or, in a countervailing duty proceeding, five) consecutive administrative reviews in order to qualify for a company-specific revocation. One consequence of this policy is that it forces companies to request administrative reviews that they might not otherwise request, thereby needlessly adding to the Department's workload.

In an attempt to reduce the administrative burden on parties and Department personnel, while at the same time maintaining our current policy that there must be a consistent pattern of no dumping or subsidization before we will consider revocation, paragraph (d) eliminates the requirement that the Department actually conduct a review in each of the three (or five) years before revocation. Instead, the Department will require that reviews of the first and last years of the three- or five-year period demonstrate an absence of dumping or subsidization. In other words, the Department would be able to revoke an order (or terminate a suspended investigation), despite the fact that an administrative review may not have been conducted for one or more of the intervening years, as long as the cash deposit rate in the end review years was zero. The Department reasons that if a review of the first year establishes an absence of dumping or countervailable subsidies, the lack of a request for reviews of subsequent years by domestic interested parties is sufficient to establish the continued absence of dumping or countervailable subsidies

during those years. However, to ensure that the lack of requests for reviews is not simply due to the absence of imports in commercial quantities, the Department will require a certification from a company seeking revocation (or each signatory in the case of a suspended investigation) that it sold subject merchandise to the United States in commercial quantities in each of the three (or five) years, including any unreviewed intervening years. The Department will establish whether sales were made in commercial quantities based upon examination of the normal sizes of sales by the producer/exporter and other producers of subject merchandise. In deciding commercial quantities, the Department will consider natural disasters and other unusual occurrences which might affect the potential for production or exportation.

Paragraph (e) retains the procedures currently found in §§ 353.25(b) and 355.25(b) regarding requests for revocation and termination based on the results of administrative reviews. One change is that in a countervailing duty proceeding, paragraph (e)(2)(iii) requires that, along with the certification that the person has received no net countervailable subsidy for five consecutive years, the person must submit a calculation demonstrating the basis for the conclusion that the person received no net countervailable subsidy in the fifth year. This calculation should be based on methodologies used by the Department in the most recently completed segment of a proceeding. The Department will review this calculation, and will notify the person if the Department identifies a methodological or other error, the correction of which may reveal a net countervailable subsidy that is above de minimis for that year. In addition, to conform to the changes in paragraph (d) regarding unreviewed intervening years, the requester must provide certifications regarding sales to the United States in commercial quantities.

Paragraph (g) deals with revocations and terminations based on changed circumstances reviews, and is almost identical to prior sections 353.25(d) and 355.25(d). The one substantive change is that, in light of the new sunset review procedure under section 751(c) of the Act, we have eliminated the prior ''sunset revocation'' procedure based on the absence of requests for administrative reviews.

Paragraphs (h) through (i) deal with revocations and terminations based on other review procedures, such as changed circumstances reviews by the Commission and sunset reviews by the Department and the Commission.

Paragraph (m) is a transition rule designed to account for the fact that the URAA altered the substantive rules for determining when merchandise is fairly traded under the Act. Essentially, for purposes of satisfying the three- and five-year requirements for revocation or termination, paragraph (m) gives a company or foreign government credit for the absence of dumping or countervailable subsidies during years to which the pre-URAA version of the Act applies. For example, in the case of a particular company, if, under the transition rules of section 291(a)(2) of the URAA, there were two administrative reviews showing two years of no sales at less than foreign market value (under the pre-URAA version of the Act) and one year of no sales at less than normal value (under the Act as amended by the URAA), the company would be deemed to have satisfied the three-year requirement for revocation.

Section 351.223

Section 351.223 deals with the procedures for requesting and initiating a downstream product monitoring program under section 780 of the Act. There are no substantive changes from existing § 353.27.

Section 351.224

Section 351.224 deals with the disclosure of calculations and procedures for the correction of ministerial errors. Section 351.224 is based on existing §§ 353.20(e), 355.20(h), 353.28, and 355.28, and on proposed regulations concerning the correction of significant ministerial errors in preliminary determinations in antidumping and countervailing duty investigations (see Notice of Proposed Rulemaking and Request for Public Comments, 57 FR 1131 (January 10, 1992) (Proposed Regulations)). However, section 351.224 contains numerous changes intended to streamline the disclosure and ministerial error correction process.

The principal goal of these changes is to provide for the issuance of a correction notice normally within 30 days after the date of public announcement of the preliminary or final determination or final results of review. The date of public announcement is the date on which the signed determination or results of review is first made available to interested parties. This goal is consistent with the proposal from a number of commentators that the Department should respond to ministerial error allegations prior to the date when a summons must be filed with the Court of International Trade or when a notice of intent to commence panel review must be filed with the NAFTA Secretariat. This 30-day framework is intended to avert needless litigation by allowing parties sufficient time to review the correction notice before the litigation deadline arrives.

Paragraph (b), which deals with disclosure, has been revised from the existing and proposed regulations to eliminate the requirement that a party to the proceeding request disclosure. Instead, paragraph (b) provides for automatic disclosure normally within five days after the date of public announcement of the preliminary or final determination or final results of review. In this context, disclosure refers both to the release of disclosure documents and to the holding of a disclosure meeting. In this regard, because paragraph (c)(1) provides that comments concerning ministerial errors must be filed within five days after the earlier of the date of the release of the disclosure documents or the date of the disclosure meeting, parties are advised to schedule disclosure meetings as early as possible. One commentator proposed that there be at least five days between the release of disclosure materials and the disclosure meeting. Due to the time constraints of the 30-day framework, however, the Department normally will not be able to extend the disclosure and comment process.

Paragraph (b) also provides for disclosure normally within 10 days after the date of public announcement of the preliminary results of review. Although, as discussed below, the Department will not amend a preliminary results of review to correct a ministerial error, the Department believes that prompt disclosure will assist parties in the preparation of any case brief and in determining whether to request a hearing. In either an investigation or a review, parties that do not want to receive disclosure materials or to have a disclosure meeting should inform the Department promptly.

A number of commentators proposed that as part of disclosure, the Department provide the computer program on diskette. The Department intends to accommodate this proposal, where practicable, upon request from a party. The Department may charge a nominal fee for providing a copy of the computer program on diskette.

We also should note that paragraph (b) provides for disclosure only if the Secretary has performed calculations. For example, in certain types of reviews, such as a sunset review or an Article 4/Article 7 review, the Department may not calculate dumping margins or

countervailable subsidy rates, but instead might only make a judgment as to whether an order should remain in effect. In such instances, the final results of review would contain a full statement of the Department's legal and factual conclusions, and there would be nothing further to ''disclose.''

Paragraph (c)(2) establishes the time limits for filing comments concerning ministerial errors. Specifically, a party to the proceeding must file comments not later than five days after the earlier of (i) the date of release of disclosure documents to that party, or (ii) the date of the disclosure meeting with that party. With respect to a preliminary determination in an investigation, a party may submit only comments concerning a significant ministerial error as defined in paragraph (g). With respect to a final determination in an investigation or a final results of review, a party may submit comments concerning any ministerial error as defined in paragraph (f). One commentator proposed that the Department establish regulations for the correction of ministerial errors made in a preliminary results of review. The Department does not believe that such regulations would be appropriate. Unlike a preliminary determination in an investigation, which may result in the suspension of liquidation and the imposition of provisional measures, a preliminary results of review has no immediate legal consequence. As a result, a more judicious use of Department resources is to correct any ministerial errors made in a preliminary results of review in the final results. See Proposed Regulations at 1132.

Paragraph (c)(3) establishes the time limits for filing replies to comments. Specifically, replies to comments must be filed not later than five days after the date on which such comments are made. One commentator suggested eliminating replies to comments because alleged ministerial errors should be indisputable. While it is often the case that a ministerial error is obvious, there are instances where the ''ministerial'' nature of an error or the impact of an error is in dispute. In these instances, parties' replies aid the Department in analyzing the allegation. There is an exception for replies to comments in connection with a significant ministerial error in a preliminary determination. Because of greater time constraints due, in part, to the fact that Department personnel conduct verification soon after the announcement of a preliminary determination, the Department will not consider replies to comments in a preliminary determination. Any reply that a party wishes to make should be included in that party's case brief so that the Department may address the reply in its final determination.

Paragraph (c)(4) deals with the extension of the time limit for filing comments concerning a ministerial error in a final determination or a final results of review. A party may file a written request showing good cause for extension within three days after the date of the public announcement of a final determination or a final results of review. The Department will not grant an extension of the time limit for filing comments on a significant ministerial error in a preliminary determination. Although the Department normally has 30 days in which to announce the issuance of a correction notice, the time frame for analyzing significant ministerial errors allegations in a preliminary determination is, as explained above, more constrained. As noted previously, a party has the opportunity to raise a ministerial error allegation in its case brief for consideration in the final determination or final results of review.

Some commentators suggested that domestic interested parties be allowed more time to file comments on ministerial errors because these parties have more material to review than respondents. The Department does not believe that it is appropriate to distinguish between domestic interested parties and respondents in this fashion. However, the fact that a domestic interested party intends to file ministerial error comments on a large number of respondents may provide good cause for an extension of the time to file comments. The Department will make such extension decisions on a case-by-case basis, taking into consideration the intended 30-day framework for addressing ministerial error allegations.

Paragraph (d) deals with the contents of comments and replies. In order for the Department to complete its analysis of alleged ministerial errors within the 30-day framework, comments must reference specific evidence in the official record to explain the alleged ministerial error and must present the appropriate correction. In addition, comments concerning an alleged significant ministerial error in a preliminary determination must demonstrate how the alleged ministerial error is significant by illustrating the effect of the error on the weighted-average dumping margin or countervailable subsidy rate. One commentator proposed that parties be allowed to submit factual information past the appropriate time limits if the information is needed to show or deny the existence of ministerial errors. The Department has not adopted this proposal. Based on the definition of ministerial error as set forth in paragraph (f), whether something qualifies as a ministerial error should be discernable from evidence already on the official record. Paragraph (d) also requires that replies to any comments be limited to issues raised in such comments.

Paragraph (e) deals with the analysis of any comments received and the announcement of the issuance of a correction notice (normally not later than 30 days after the date of public announcement of the Department's preliminary or final determination or final results of review). As discussed above, the 30-day framework is intended to avoid needless litigation by providing for resolution of ministerial error allegations before the litigation deadline expires.

Paragraph (f) defines *ministerial error* and is largely unchanged from existing §§ 353.28(d) and 355.28(d).

Paragraph (g) defines *significant ministerial error* and essentially is unchanged from proposed §§ 353.15(g)(4) and 355.15(h)(4). *See* Proposed Regulations at 1133–34. A number of commentators proposed setting a flat rate as a benchmark for ''significant.'' These proposed rates were lower than the standard for ''significant'' originally set out in the Proposed Regulations and incorporated herein. The Department believes that it would not be appropriate to lower the significant ministerial error standard. In establishing this standard, which, as a matter of administrative practice, the Department has applied successfully for several years, the Department had to balance the competing interests of accurate preliminary determinations and the need to complete the investigation in a timely manner. The Department has determined that the current standard allows it to correct the most serious errors promptly, while also permitting it to complete verification and issue a timely final determination. Moreover, the Department encourages parties, in their case briefs, to comment on all ministerial errors, including those not meeting the ''significant'' standard; all such errors will be addressed in the final determination.

Section 351.225

Section 351.225 deals with scope rulings, including rulings involving circumvention. With a few exceptions, section 351.225 is substantively unchanged from existing §§ 353.29 and 355.29, but paragraphs (b) through (f) do

contain some clarifications regarding procedures. Among other things, these clarifications are intended to make clear that the Department may, if appropriate, make a scope ruling based solely upon the application and prior determinations. Only if the Department determines that further inquiry is warranted will it formally initiate a scope inquiry. One other change worth noting is that paragraph (f)(5) establishes a 300-day deadline for scope rulings to which the Department will adhere to the extent practicable.

Paragraphs (g) and (h) incorporate by reference sections 781(a) and (b) of the Act. Several commentators argued that the standard for determining whether the process of assembly or completion under these sections of the Act was minor or insignificant had not changed from prior law. However, as observed by other commentators, the Senate Report states that, ''section 230 [of the URAA] amends section 781(a) and (b) to shift the focus of the circumvention inquiry away from a test of the difference in value between the subject merchandise and the imported parts or components toward the nature of the process performed in the United States or third country.'' S. Rep. 103–412, 103d Cong, 2d Sess., at 81.

Paragraphs (g) and (h) require the Department, in determining the value of parts or components purchased from affiliated parties, to apply the major input rule of section 773(f)(3) of the Act. Several commentators argued that such a provision is necessary to avoid the use of distorted values between affiliated parties. The Department agrees that such a provision is consistent with the Department's policy of avoiding the use of distortive prices paid to affiliated parties in its calculations.

Several commentators also argued that the Department should establish numeric guidelines for determining whether the value of imported parts or components constitutes a ''significant portion of the total value of the merchandise'' within the meaning of sections 781(a)(1)(D) and (b)(1)(D) of the Act. We have not adopted this suggestion, because the SAA recognizes that no single standard would be appropriate for every product examined by the Department. The SAA, at 894, states, ''[t]hese provisions do not establish rigid numerical standards for determining the significance of the assembly (or completion) activities in the United States or for determining the significance of the value of the imported parts or components.''

One commentator argued that the term ''class or kind'' as used in section 781(a) and (b) of the Act should be construed to encompass more than merely the category of merchandise covered by an order. Specifically, this commentator argued that, for purposes of circumvention inquiries, the term ''class or kind'' should always include components or parts. The Department agrees with other commentators, however, who argued that the term ''class or kind'' in the circumvention context is not broader than the merchandise covered by an order for other purposes of the statute.

Paragraph (k) adds advertisement or display to the criteria that the Department uses to determine whether a product is within the scope of an antidumping duty or countervailing duty order. Although this criterion was not previously specified in the regulations, the courts have recognized that it is a factor that should be considered. See *Kyowa Gas Chem. Indus.* v. *United States,* 582 F. Supp. 887, 889 (CIT 1984). One commentator urged the Department to add ''substitutability'' to the criteria. However, the Department believes that such a criterion would add significant uncertainty to the Department's orders, because it implies that an order could be expanded to include many products not contemplated in the petition (for example ''substitutability'' could be cited to expand an order covering honey to include sugar, corn syrup and molasses).

Paragraph (l) sets forth the procedures for suspension of liquidation. One party argued that the Department should order the suspension of liquidation as soon as a circumvention inquiry is initiated and impose cash deposits retroactively if the final circumvention determination is affirmative. While the Department recognizes that parties may have a ''free ride'' by circumventing until caught, the proposal would punish unfairly parties who unknowingly circumvent an order. The statute does not require a finding of intent in order to make an affirmative circumvention determination. Moreover, the Department agrees with commentators who argued that this proposal would create tremendous business uncertainty and impose a heavy burden on the Department and on Customs.

Paragraph (l)(4) provides that, when a final scope ruling is made within 90 days of the initiation of a review, products covered by that decision will be included in the calculation of any dumping margin or countervailing duty rate in that review, where practicable. If the ruling is made after that date, entries of the product will be subject to the final results of review, but, because collection of information is not practicable after this date, the Department will rely on non-adverse facts available.

New paragraph (m) provides that if different orders relate to the same product, the Department may, under appropriate circumstances, conduct a single scope inquiry covering all such orders. Thus, for example, if there is an antidumping duty order on widgets from Germany, and a countervailing duty order on widgets from France, the Department may conduct a single inquiry under paragraph (i) (minor alterations), (l) (later developed products) or (k) (other scope determinations). Any final ruling resulting from the inquiry would apply to both orders. In this way the Department will avoid both the burden of redundant inquiries and the danger of inconsistent determinations.

Finally, paragraph (n) deals with the service requirements for scope inquiries. Paragraph (n) defines the term ''scope service list'' as used throughout section 351.225 to include all parties who have participated in any segment of the proceeding. This broad service list is necessary because scope rulings are not often limited to the specific parties raising the issue, but rather affect all domestic and respondent interested parties.

Two commentators argued that the Department should look to Customs rulings in determining the country of origin of merchandise. The Department agrees that a Customs ruling may provide useful guidance; however, as recognized by the CIT, the Department is not required to follow Customs rulings in making its own scope rulings. *Diversified Products* v. *United States,* 572 F. Supp. 883, 887–88 (1983).

Other Issues

One commentator suggested that the Department publish in the Federal Register its ''remand determinations''; *i.e.,* the determinations the Department makes in response to a remand order from a court or a NAFTA binational panel. We have not adopted this suggestion at this time, because it is expensive to publish documents in the Federal Register and because the Department's current practice is to make remand determinations available to the public on request (with business proprietary information deleted, of course). However, to the extent that parties experience difficulties in obtaining copies of remand determinations, the Department will consider this suggestion as well as other alternatives, such as making these and other documents available on the Internet.

Some commentators have expressed the view that industrial users of products under antidumping or countervailing duty orders should have an opportunity to demonstrate that certain products are not available domestically, that continued inclusion of such products within an order does not serve the purpose of the law, and that, if the petitioners fail to show that the material is available domestically, the order should be revoked or narrowed with respect to those certain products. We are not proposing changes to the rules in this area because the existing practices have been adequate to address valid concerns. The clarification of investigations in their early stages to avoid later supply problems, and the narrowing of existing orders through changed circumstances proceedings has resulted in exclusion of a number of products not made in the United States, in direct response to supply concerns expressed by industrial users. Suggestions as to the use of existing authority for this purpose would be appropriate.

Subpart C—Information and Argument

Subpart C deals with collection of information and presentation of arguments to the Department, and is based on subpart C of Parts 353 and 355 of the Department's existing regulations. In addition to the regulatory changes noted in this section, the Department is also in the process of introducing other procedural reforms to streamline and simplify antidumping and countervailing duty proceedings. Where these reforms require regulatory change or are appropriately contained in regulations, they are included here. Other non-regulatory simplification measures will be introduced in Policy Bulletins and through Department procedures. Non-regulatory changes include (1) providing greater consistency in the handling of draft and newly-filed petitions by having, to the extent practicable, the same Department personnel initiate and conduct the investigation that reviewed the original petition; and (2) making available on the Internet all Department determinations under the URAA, as well as the URAA itself, the Statement of Administrative Action, and these regulations. The process of simplification is ongoing and one in which the Department continues to invite suggestions.

Section 351.301

Section 351.301 sets forth the time limits for submission of factual information in investigations and reviews.

Paragraph (b) is based on existing §§ 353.31(a)(1) and 355.31(a)(1), and sets forth the time limits in general for submission of factual information. Several commentators suggested that the Department adopt regulations establishing a final deadline of seven days prior to verification for the submission of information, whether solicited or unsolicited. Another commentator suggested a deadline of 14 days prior to verification. The Department believes that the seven-day deadline appropriately balances the needs of the Department to prepare for verification with the goal of easing the burdens on parties appearing before the Department. Therefore, paragraph (b)(1) provides that, with respect to investigations, submission of factual information is due no later than seven days before the date on which verification of any person is scheduled to commence. The timing of submission of factual information under existing §§ 353.31(a)(1)(i) and 355.31(a)(1)(i) also is tied to verification. However, there has been some confusion over the deadline as parties variously interpreted ''verification'' to mean a company-specific verification or verification for any company (or, in a CVD proceeding, verification of the government). In furtherance of the goal of simplifying the Department's procedures, these regulations clarify that the deadline for submission of factual information is identical for all parties, *i.e.*, seven days before the date on which verification of any person is scheduled to commence. (In contrast, the deadline for submission of factual information after verification, for reasons discussed below, is company- or government-specific.)

With respect to administrative reviews, paragraph (b)(2) provides that submission of factual information is due no later than 140 days after the last day of the anniversary month. With respect to changed circumstances, sunset, and section 762 (quantitative restriction agreements) reviews, paragraph (b)(3) provides that submission of factual information is due no later than 140 days after the publication of notice of initiation of the review. With respect to new shipper reviews, new paragraph (b)(4) provides that submission of factual information is due no later than 100 days after the publication of notice of initiation of the review. With respect to the remaining types of reviews, paragraph (b)(5) provides for submission of factual information by a date specified by the Department.

One commentator proposed that, once the deadline for submissions prior to verification has passed, the Department should not allow for submission of any corrections at verification. The Department has not adopted this proposal. The Department's current practice allows respondents to submit information at the beginning of verification to correct errors found during the course of preparing for verification. This policy balances the requirement that respondents present accurate and timely responses, with the goal of accurate determinations. Cf. *Murata Mfg. Co.* v. *United States*, 820 F. Supp. 603, 607 (CIT 1993) with *NSK Ltd.* v. *United States*, 798 F. Supp. 721 (CIT 1992), *aff'd*, 996 F.2d 1236 (Fed. Cir. 1993). The regulations make clear that the Department will continue this practice, as well as the practice of allowing respondents to submit information after verification where the Department has requested such information. Specifically, paragraphs (b)(1)–(4) provide that where verification is scheduled for a person, factual information requested by verifying officials will be due no later than seven days after the date on which the verification of that person is completed. This practice promotes accuracy and completeness in the calculation of margins (rates), both of which are underlying objectives of the new facts available methodology. Furthermore, the SAA, at 868, notes that the Department is not precluded from requesting information, in addition to that set forth in the verification outline, during a verification.

New paragraph (c) sets for the time limits for certain submissions, including information to rebut, clarify, or correct factual information submitted by another party, information in questionnaire responses, and publicly available information to obtain values for factors in nonmarket economy cases.

Paragraph (c)(1) is based on existing §§ 353.31(a)(2) and 355.31(a)(2), and provides the time limits for when an interested party may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party. The existing regulations allow only domestic interested parties to rebut, clarify, or correct factual information submitted by respondent interested parties. The regulation was drafted this way to allow domestic interested parties time to comment on respondents' information, particularly where such information may have been submitted on or after the applicable deadline. Upon further consideration, the Department has determined that the goal of accurate determinations is enhanced by allowing any interested party time to comment on submissions of factual information. As a result, paragraph (c)(1) provides that

any interested party may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party at any time prior to the applicable deadline for submission of factual information. If factual information is submitted (with the Department's permission) after the applicable deadline, interested parties have 10 days to comment on such information. This 10-day period, however, does not allow interested parties to continue to comment indefinitely on an alternating 10-day cycle. Rather, if the applicable deadline for submission of factual information has passed, interested parties would have one opportunity to comment on each such submission.

Paragraph (c)(2) deals with questionnaire responses and other submissions on request, and is based on existing §§ 353.31(b) and 355.31(b). Paragraph (c)(2)(i) provides that the Department may request any person to submit factual information at any time during a proceeding. Paragraph (c)(2)(ii) is new, and incorporates the requirements of the SAA, at 869, that the Department give notice of certain requirements to each interested party from whom the Department requests information.

Paragraph (c)(2)(iii) is new, and incorporates the requirements of the SAA, at 866, that interested parties shall have at least 30 days from the date of receipt to respond to the full initial questionnaire. The time limit for response to individual sections of the questionnaire, if the Secretary requests a separate response to such sections, may be less than the 30 days allotted for response to the full questionnaire. In particular, the Department anticipates that the response to Section A of a questionnaire, which seeks general information about a company, will be due before the expiration of the 30-day period. The Department's ability to timely identify appropriate respondents, in particular, would be hampered were the Department to delay the deadline for submission of this information. Consistent with the SAA, at 866, paragraph (c)(2)(iii) also provides that the ''date of receipt'' will be seven days from the date on which the initial questionnaire was transmitted.

Paragraph (c)(2)(iv) is new, and provides a 14-day deadline for notification by an interested party, under section 782(c)(1) of the Act, of difficulties in submitting a questionnaire response. Section 782(c)(1) of the Act provides that, if promptly asked to do so by an interested party, the Department may modify its requests for information to avoid imposing an unreasonable burden on that party. The statute also provides that the Department will take into account difficulties experienced by interested parties, particularly small companies, in supplying information, and will provide any assistance that is practicable. One commentator suggested that petitioners be allowed to comment formally on requests by respondents that the Department modify information requests. Parties do have the right generally to submit comments on any relevant issue, and, as such, the Department does not believe that a special regulation addressing this issue is necessary. Another commentator proposed defining ''small companies'' to whom the Department would provide assistance using an objective criterion, such as a company's annual sales volume (*e.g.*, small companies are those that earn less than $1 million in annual gross revenue). The Department does not believe that it is in a position to define ''small companies'' at this juncture. The Department will make a determination of what is a small company on a case-by-case basis.

Paragraph (c)(2)(v) is new, and, consistent with the SAA, at 866, indicates that a respondent interested party may request that the Department conduct a questionnaire presentation, during which Department officials will explain the requirements of the questionnaire.

Paragraph (c)(3) is new and extends the time limits for submission of publicly available information to obtain values for factors in nonmarket economy cases. Because publicly available valuation data is not verified, the Department is able to accept such data after verification. The extended time limits, therefore, permit parties to submit publicly available information even after a preliminary determination or a preliminary results of review, but still allow parties ample opportunity to comment on such information in their case briefs.

Paragraph (d) sets the time limits for certain allegations, including allegations concerning market viability, allegations of sales at prices below the cost of production, countervailable subsidy allegations, and upstream subsidy allegations.

Paragraph (d)(2) is new, and sets the time limits in investigations and reviews for allegations of sales at prices below the cost of production (COP) under section 773(b) of the Act.

The Department received a number of comments regarding the ''reasonable grounds'' threshold for initiation of COP investigations. Some commentators argued for consideration of sales below cost allegations on a country-wide basis. Other commentators suggested that the Department's regulations provide that where sales below cost allegations are not submitted until after respondents have provided questionnaire data, the allegations must be based on information specific to the exporter or producer.

The Department agrees with the latter commentators that where company-specific information has been placed on the record, any subsequent sales below cost allegation must take into consideration such information. The SAA, at 833, states that the standard for initiation of a sales below cost investigation is the same as the standard for initiating an antidumping investigation. The Department interprets this to mean that a sales below cost allegation, like an allegation of dumping, must be supported by information reasonably available to petitioner, including information already on the record.

The Department also, however, agrees with the former commentators that the SAA does provide for consideration of a sales below cost allegation on a country-wide basis. The Department's practice under the existing regulations only allows for company-specific allegations based on company-specific data. (In some instances, petitioners have used their own data where certain company-specific information was unavailable.) In practice, this meant that petitioners did not file sales below costs allegations until after companies filed their Section B responses covering home market sales data. As a result, in many instances the Department was unable to request and receive companies' cost data in time to analyze it before the preliminary determination. Pursuant to the SAA, at 833–34, however, the Department now has the authority to consider sales below cost allegations on a country-wide basis. In most instances, considering a country-wide allegation at the outset of an investigation will allow the Department to include its below-cost analysis in the preliminary determination, and, hence, consistent with the SAA, at 833–34, will provide parties with a greater opportunity to comment on the Department's analysis.

Therefore, with respect to country-wide allegations, paragraph (d)(2)(i)(A) allows the petitioner to file such an allegation in an investigation up until 20 days after the date on which the initial questionnaire was transmitted. Consistent with the SAA, at 833, this time frame will permit the Department to initiate below cost inquiries, where appropriate, at the outset of the case. In addition, the 20-day deadline—one day

before Section A responses normally are due—provides petitioners with the maximum time available to make a country-wide allegation before company-specific data is filed by respondent interested parties.

With respect to company-specific allegations, paragraph (d)(2)(i)(B) provides for filing such allegations in an investigation up to 20 days after a respondent interested party files a response to the relevant section of the questionnaire; *i.e.*, the Section B response containing home market sales data. The time limit, under paragraph (d)(2)(ii), for filing company-specific sales below cost allegations in administrative reviews, new shipper reviews, and changed circumstances reviews is identical. Paragraph (d)(2)(iii) provides the time limit for filing company-specific sales below cost allegations in expedited antidumping reviews.

A number of commentators also argued that the changes under section 773(b) of the Act in no way relaxed the ''reasonable grounds'' initiation standard for COP investigations, but, instead, were intended simply to permit the Department to initiate such investigations at the outset of a case. One commentator maintained that standards for below-cost investigations continue to be more stringent than those of an antidumping investigation. The Department believes that the statutory changes do not change the ''reasonable grounds'' requirement for initiation of a COP investigation. The Department will continue its practice of assessing the sufficiency of a petitioner's below-cost allegations on a case-by-case basis, and it will reject those allegations that are clearly frivolous or that are otherwise not supported by information reasonably available to petitioners.

The Department received one other comment of note concerning its initiation standard for COP investigations. The commentator suggested that as part of its initiation threshold, the Department take into account ''aberrational sales'' by accepting only those below-cost allegations that provide a ''reasonable ground'' for the existence of more than 20 percent below cost sales (*i.e.*, the substantial quantities threshold under section 773(b)(2)(C)(i) of the Act). Several other commentators urged the Department to reject this suggestion, stating that there was no statutory basis for such a practice. The proposal for a substantial quantities initiation threshold could apply only in those instances where respondents already have submitted questionnaire data. Therefore, the proposal undoubtedly conflicts with the Department's authority to consider country-wide cost allegations at the outset of an investigation. Moreover, even in the case of company-specific allegations filed subsequent to respondents' submission of questionnaire data, the proposal lacks merit, because the substantial quantities threshold under section 773(b)(2)(C)(i) of the Act does not relate to the existence of ''reasonable grounds'' to initiate a COP investigation.

Paragraph (d)(3)(i) is based on existing section 355.31(c), and sets forth the time limits for a countervailable subsidy allegation in investigations and reviews. These time limits are unchanged from the existing regulations. Paragraph (d)(3)(ii) is based on existing § 355.20(b), and sets forth the time limits for an upstream subsidy allegation in an investigation. The 10-day time limit for an allegation made prior to a preliminary determination is new. The 15-day time limit for an allegation before a final determination is consistent with existing regulations.

One commentator suggested that the Department's regulations clarify that the determination of whether ''new'' evidence has been submitted by the petitioner regarding a subsidy will be based on a consideration of the public evidence already included in the record of the proceeding. The public record would automatically include all public verification reports from prior segments of the proceeding. Furthermore, the commentator argued that upon receipt of new evidence of a subsidy, the burden of proof should shift to the foreign government, because it is in possession of the information necessary to establish that the program is not countervailable. Finally, the commentator suggested that the Department change its deadline for receiving new subsidy allegations from 120 days after publication of the notice of initiation of an administrative review to three weeks before verification.

While the Department may place public reports from prior segments of the proceeding on the record in an ongoing proceeding, it is not be required to do so. Parties are free to do so themselves as long as the information is submitted in a timely fashion. As for shifting the burden of proof, the Department's practice currently is to reinvestigate subsidy programs previously determined to be noncountervailable only where new information or evidence of changed circumstances is present. Similarly, the Department will not reexamine the countervailability of a program previously determined to be countervailable absent new information or evidence of changed circumstances. In both of these instances, the burden is on the domestic or respondent interested parties to provide new information or evidence of changed circumstances that would warrant a reconsideration of the subsidy program in question. With respect to extending the time for filing new subsidy allegations, the Department believes that a deadline of three weeks before verification does not provide sufficient time for the Department to send out and receive a response to a questionnaire concerning the alleged subsidy.

Paragraph (d)(4) is new, and sets forth the time limit for a targeted dumping allegation in an antidumping investigation. One commentator suggested that petitioners be given at least 90 days from the date of receipt of a respondent's sales listings in which to comment on possible targeted dumping. The Department appreciates the fact that at the outset of an antidumping investigation, petitioners normally will not have access to the type of data that goes into a targeted dumping analysis, and that they will need time in which to analyze questionnaire responses once they are received. However, the Department believes that in most instances, a deadline of 30 days before the scheduled date of the preliminary determination will provide petitioners with sufficient time to analyze the applicable data and submit an allegation, if appropriate. If the timing of responses does not permit adequate time for analysis, the Department may extend the time as appropriate.

Section 351.302

Section 351.302 is new, and clarifies the Department's authority to grant extensions of time limits and to reject untimely or unsolicited submissions. Although portions of § 351.302 are based on provisions of the Department's current regulations, other portions are entirely new.

Paragraph (b) provides that the Department may extend a regulatory deadline based upon its own determination that there is good cause to do so or where an interested party shows good cause for such an extension. Parties should not draw the inference that simply because a particular deadline does not explicitly address the Department's authority to extend such deadline that the Department may not do so. Unless expressly precluded by statute, the Secretary may extend any deadline for good cause. The deadlines that include the phrase ''unless the Secretary alters this time limit'' generally are tied to transmittal of, or response to, the initial questionnaire,

and, as such, are more likely to be extended than other deadlines tied to, for example, the date of publication of the preliminary determination (see, *e.g.*, § 351.301(d)(1) versus § 351.301(c)(3)).

Paragraph (c) sets forth the procedures for requesting an extension of a time limit, and is based on existing §§ 353.31(b)(3), 355.31(b)(3), 353.31(c)(3), and 355.31(c)(3). One commentator suggested that extensions for submission of questionnaire responses should be granted only in ''extraordinary circumstances,'' and that extensions should be limited to a period of 10 days. The Department agrees that it is important to collect information as early as possible in an investigation or review to provide parties an adequate opportunity to comment on the data and to provide the Department with adequate time to conduct its analysis. However, decisions regarding the possibility of extensions will be based on the ability of the party to respond within the original deadline and the parties' and the Department's ability to accommodate the requested extension. Thus, the Department believes that it is appropriate to determine whether to grant an extension, and for how long, based upon the facts in the particular proceeding. Another commentator suggested that the regulations provide for issuance of only one supplemental questionnaire. The Department has no intention of requesting the same information time after time. However, a limitation on the number of supplementals could interfere with the Department's ability to obtain clarifications or further information necessary to reach an informed decision.

Paragraph (d) provides that the Department will not consider untimely submissions for which it has not granted an extension under paragraph (b), and that it will return such materials to the submitter. In addition, consistent with section 782(c) of the Act, to the extent practicable rejected submissions will be accompanied by a written explanation of the reasons for not accepting the material.

One commentator proposed that parties be allowed to file objections to the Department's rejection of information, and that these objections be included in the record for judicial review. As long as a party's objection itself does not include a restatement of the rejected information, parties are permitted under the regulations to file timely comments on the Department's decision to reject information; *e.g.*, as part of its case brief. Therefore, no specific provision is necessary to meet the commentator's objective.

Section 351.303

Section 351.303 is new, and contains the procedural rules regarding filing, format, service, translation, and certification of documents. The Department has attempted to simplify these requirements, and, in all instances, has reduced the number of copies required for filing. Section 351.303 applies to all persons submitting documents to the Department. Although portions of § 351.303 are based on existing §§ 353.31, 355.31, 353.38(e), and 355.38(e), other portions are entirely new.

Paragraph (c) is new, and indicates the number of copies required for filing documents with the Department. Paragraph (c)(1) provides that, in general, six copies of any submission must be filed with the Department. Paragraph (c)(2) describes the application of the one-day lag rule under which filing requirements are altered slightly to allow for corrections in the bracketing of business proprietary information. The existing one-day lag rule filing requirements have been modified to simplify and streamline the filing process. Specifically, paragraph (c)(2)(i) indicates that only one copy of the business proprietary version of a document must be filed with the Department within the applicable time limit. (The service requirements of paragraph (f) also apply.) Paragraph (c)(2)(ii) provides that on the next business day, six copies of the complete, final business proprietary version (*not* just the corrected pages) must be filed with the Department. With respect to the final business proprietary version, the service requirements of paragraph (f) may be satisfied by serving other persons with just the corrected pages. The final business proprietary version must be identical to the business proprietary version filed on the previous business day, except for any bracketing corrections. Paragraph (c)(2)(iii) provides for the filing of three copies of the public version simultaneously with the filing of the final business proprietary version. Paragraph (c)(2)(iv) describes the filing requirements for information in double brackets (information which the submitter does not agree to have disclosed under APO). Finally, paragraph (c)(3) clarifies that all information on computer media must be releasable under APO.

Paragraph (d) contains the formatting requirements for documents filed with the Department. Paragraph (d)(2)(iv) is new, and requires that documents indicate the Department office conducting the proceeding.

Paragraph (e) requires that documents submitted in a foreign language be accompanied by an English translation. This requires that all non-English language documents be accompanied by an English translation of pertinent portions. When parties are unable to comply with this requirement, the Department will work with them on an acceptable alternative.

Paragraph (f)(1) provides for service of copies on other persons. Paragraph (f)(2) provides that each document filed with the Department must be accompanied by a certificate of service. Paragraph (f)(3)(i) provides for service of briefs. Paragraph (f)(3)(ii) is new, and clarifies the requirements for service of requests for review.

Paragraph (g) clarifies that each submission containing factual information must be accompanied by the appropriate certification regarding the accuracy of the information.

Section 351.304 [Reserved—APO]

Section 351.305 [Reserved—APO]

Section 351.306 [Reserved—APO]

Section 351.307

Section 351.307 deals with verification of information, and is based on existing §§ 353.36 and 355.36.

Paragraph (b)(1) is based on existing §§ 353.36(a)(1) and 355.36(a)(1), and indicates when the Department will verify factual information. One commentator suggested defining ''good cause for verification,'' the standard applicable in determining whether to verify in an administrative, new shipper, or changed circumstances review, by including in the regulations a non-exhaustive list of particular circumstances under which the Department normally would find that good cause for verification exists; *e.g.*, changes in a respondent's accounting methodology, organization structure, or ownership, or significant changes in the product-mix offered. While, the Department agrees that these circumstances may, in some cases, provide good cause for verification, it is more appropriate to determine good cause on a case-by-case basis, weighing the specific facts before the Department in any given review.

Paragraph (b)(1)(v) deals with requests for verification in an administrative review, and is based on existing §§ 353.36(a)(1)(v)(A) and 355.36(a)(1)(iv)(A). The deadline for domestic interested parties to request verification has been shortened from 120 days to 100 days after publication of the notice of initiation of review. This change is intended to give the Department a longer time to prepare for

verification, thereby resulting in more efficient verifications.

Paragraph (b)(2) is new, and provides that the Department may verify in any other segment of the proceeding not provided for in paragraph (b)(1), if the Department determines that it is appropriate to do so.

Paragraph (b)(3) is based on existing §§ 353.36(a)(2) and 355.36(a)(2), and provides that the Department may select and verify a sample of exporters or producers where it is impractical to verify relevant factual information for each person due to the large number of exporters or producers included in an investigation or administrative review.

Paragraph (b)(4) is new, and, consistent with the SAA, at 868, describes when the Department may conduct verification.

Paragraph (c) is based on existing §§ 353.36(b) and 355.36(b), and, consistent with the SAA, at 868, indicates that the Department will issue a verification report.

Paragraph (d) is based on existing §§ 353.36(c) and 355.36(c), and, consistent with the SAA, at 868, describes certain procedures for verification. Paragraph (d) (2), carried over from existing § 353.36 (c), provides that the Department may request access to the records of persons not affiliated with respondent exporters, producers, or importers. This provision clarifies that the Department may use the records of the unaffiliated party if needed to establish the accuracy of data provided by the respondent. The last sentence of paragraph (d) also is new, and, consistent with current practice, clarifies that as part of verification in a countervailing duty proceeding, the Department may request access to records of the government of the affected country.

One commentator proposed that to ensure that parties have an adequate opportunity to prepare for verification, the regulations should include provisions requiring that the Department provide by a particular date notice of its intent to verify, as well as detailed information regarding the location of the verification and the exhibits the Department will require. These proposals are consistent with paragraph (d), and, to the extent practicable, the Department intends to implement them in practice.

Another commentator suggested a number of ''improvements'' to the verification process. These included allowing the presence of a neutral third party at verification, copying all documentation relied upon in verification, allowing all parties (not just respondents) to review draft verification reports, including in the record both the draft verification report and the final report, conducting verification in Washington with books and records forwarded by courier or electronically, and permitting domestic counsel and consultants to participate at verifications. We agree with the commentator that there are a number of ways to improve the verification process. For example, we are modifying our questionnaire in order to collect documentation that would link the reported sales information to the respondent's general ledger. We also intend to require that, prior to verification, respondents submit any computer programs used to identify the sales subject to investigation or review. By collecting this information prior to the commencement of verification, the Department will be able to use the time available at the verification site more efficiently. While we disagree with the suggestion that a neutral third party or domestic counsel participate at verification, we invite other suggestions on how to improve the verification process.

Finally, another commentator proposed that petitioners be given a formal opportunity to comment on verification outlines. We agree that petitioners should be given opportunity to comment. Because this is part of the Department's standard practice, the Department believes that it is not necessary to include a provision in the regulations.

Section 351.308

Section 351.308 is new, and deals with determinations on the basis of the facts available.

Paragraph (b) provides that the Department will make determinations on the basis of the facts available in accordance with section 776(a) of the Act. Under the statute, the Department will use the facts otherwise available if necessary information is not available on the record, or if an interested party or any other person withholds requested information, fails to provide such information by the deadlines for submission of the information or in the form and manner requested, significantly impedes a proceeding, or provides such information but the information cannot be verified.

Evident from a comparison between the pre-URAA statute and the new statute is the fact that the circumstances triggering use of facts available are virtually identical to those triggering use of best information available (''BIA''). Significantly, however, although the circumstances giving rise to use of BIA and facts available are basically indistinguishable, the presumptive adverse inference associated with use of BIA is not automatically associated with use of facts available. Specifically, section 776(b) of the Act provides that only if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information'' may the Department use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Therefore, the determination of what to use as facts available will be affected by whether or not the Department may make an adverse inference under the statute.

A number of commentators proposed that the regulations set forth the Department's current two-tiered methodology for selecting BIA. However, given the differences between the Department's past practice regarding BIA and the new statutory provisions on facts available, the Department does not believe this proposal would be appropriate.

In cases where the Department determines that an interested party has not failed to cooperate, the Department will apply simply the ''facts available''; *i.e.*, the Department will make its determination ''based on all evidence of record.'' SAA at 869. However, as paragraph (e) provides (by cross-reference to section 782(e) of the Act), the Department will consider information that is submitted by an interested party and is necessary to the determination, but that does not meet all the applicable requirements established by the Department, only if: (1) The information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and (5) the information can be used without undue difficulties.

One commentator suggested that information contained in the petition should not be used as facts available. The statute, however, does not limit the specific sources from which the Department can obtain facts available.

In cases where the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act provides that the Department may make an adverse inference about the missing

information, and, hence, apply ''adverse facts available.'' A number of commentators proposed that ''a good faith effort'' to provide information responsive to the Department's request for information be sufficient to meet the requirement of ''acting to the best of [a company's] ability.'' The determination of whether a company has acted to the best of its ability will be decided on a fact- and case-specific basis, and the Department will consider whether a failure to respond was deliberate or simply due to practical difficulties that made the company unable to respond within the specified deadline. However, it is clear that affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.

Several commentators additionally suggested that where information is not maintained by the respondent in the ordinary course of trade, failure to produce such information should not presumptively be a violation of the ''best of its ability'' standard. However, not all information that needs to be produced during the course of a proceeding is kept in the ordinary course of business (*e.g.*, worksheets), and failure to provide such information may be deemed to violate the ''best of ability'' standard. The determination as to whether a company has acted to the best of its ability to comply with an information request can only be made based on the record evidence in a particular proceeding.

Consistent with section 776(b) of the Act and the SAA, at 870, paragraph (c) provides that an adverse inference may include reliance on secondary information or any other information placed on the record. Paragraph (c)(1) indicates that secondary information includes information derived from the petition, a final determination in an antidumping or countervailing duty investigation, or any previous review.

Paragraph (d) explains that where the Department relies on secondary information, to the extent practicable the Department will corroborate that information from independent sources, such as published price lists, official import statistics and customs data, and information obtained from interested parties during the instant investigation or review. Consistent with the SAA, at 870, the third sentence of paragraph (d) indicates that ''corroborate'' in this context means that the Department will look to such sources reasonably at the Department's disposal to examine whether the secondary information has probative value. Paragraph (d) also indicates that in accordance with the SAA, at 870, where corroboration is not practicable, the Department still may apply an adverse inference.

One commentator argued that secondary information taken from a petition need not be corroborated, because the Department used this information as the basis for its initiation. Section 776(c) of the Act, however, specifically provides that, to the extent practicable, the Department will corroborate secondary information, which includes the petition, from independent sources that are reasonably at the disposal of the Department. As a result, the Department has not adopted this proposal.

Section 351.309

Section 351.309 deals with written argument, and is based on existing §§ 353.38 and 355.38.

Paragraph (b)(1) provides that the Department will consider in making its final determination or final results of review written arguments in case or rebuttal briefs filed within the applicable time limits.

Paragraph (b)(2) provides that the Department may request written argument on any issue from any person at any time during a proceeding. For example, the Department may choose to request post-hearing briefs on a particular topic.

Paragraph (c)(1) sets out the time limits for filing case briefs in investigations and reviews. Paragraph (c)(2) indicates that, as part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages.

Paragraph (d)(1) sets out the time limits for filing rebuttal briefs. The time limit for filing rebuttal briefs—within five days after the case briefs are filed—is now the same in both investigations and reviews. Paragraph (d)(2) indicates that, as part of the rebuttal brief, parties are encouraged to provide a summary of arguments not to exceed five pages.

Section 351.310

Section 351.310 is new, and deals with matters related to hearings. Although portions of section 351.310 are based on existing §§ 353.38(b), 355.38(b), 353.38(f) and 355.38(f), other portions are entirely new. These provisions have been modified from prior regulations with an eye to easing the burdens and costs imposed on parties appearing before the Department.

Paragraph (b) is new, and provides that the Department may conduct a pre-hearing conference to facilitate the conduct of the hearing. In most instances, the pre-hearing conference will be held by telephone. Examples of issues to be discussed include the necessity of conducting a hearing, time limits for direct and rebuttal presentations, identification of significant issues, and page limits for case and rebuttal briefs.

Paragraph (c) is based on existing §§ 353.38(b) and 355.338(b), and sets forth the time limit for requesting a hearing. The existing time limits for requesting a hearing in both investigations and reviews have been extended. The extended time limit—30 days after the date of publication of the preliminary determination or preliminary results of review—will allow parties more time to consider the necessity of requesting a hearing.

Paragraph (d) is based on existing §§ 353.38(f) and 355.38(f), and indicates that upon request, the Department will hold a public hearing normally two days after rebuttal briefs are filed. Under section 774(b) and section 751(e) of the Act, the Department is required to hold a hearing upon the request of an interested party in an investigation and in any review under section 751 of the Act. In other segments of a proceeding, such as scope inquiries, the decision to hold a hearing is discretionary. Consistent with section 774(b) of the Act and existing §§ 353.38(f)(3) and 355.38(f)(3), paragraph (d)(2) provides that such hearings are not subject to the Administrative Procedure Act.

Paragraph (e) is new, and provides that the Department may consolidate hearings in two or more cases. Cases where the Department is most likely to consolidate hearings are those where common issues exist concerning the same product from different countries or where common issues exist concerning different products from the same country.

Paragraph (f) is new, and indicates that the Department may conduct closed hearing sessions where parties wish to discuss business proprietary information. The Department's existing regulations do not expressly provide for representatives to discuss business proprietary information during administrative hearings, although, in limited instances, the Department has allowed discussion of business proprietary information during a hearing. One commentator suggested that the Department should consider procedures similar to those used by the ITC regarding *in camera* sessions for purposes of discussing business proprietary information that cannot be adequately summarized for discussion at a public hearing. The commentator argued that the inability to conduct a closed hearing may prejudice parties,

who may not be able to give a full presentation of their arguments.

We agree that the Department should be able to conduct closed hearing sessions where appropriate. Paragraph (f), therefore, allows an interested party to request a closed hearing session. However, the Department believes that in the interest of transparency, closed hearing sessions should not consume the entirety of a hearing. Therefore, the Department intends to limit the duration of such sessions, and to limit them to the discrete issues identified by the requesting party. Before a closed hearing session begins, the hearing room will be cleared of all persons not subject to APO. Consistent with paragraph (g), the section of the transcript from a closed hearing session will be treated like other documents containing business proprietary information.

Section 351.311

Section 351.311 deals with countervailable subsidy practices discovered during an investigation or review, and is based on existing § 355.39. Apart from minor clarifications, the only change is the addition of subsidy programs in violation of Article 8 of the SCM Agreement, which the Department is notified of by the United States Trade Representative.

Section 351.312

Section 351.312 is new, and, consistent with section 777(h) of the Act, provides consumer organizations and industrial users the opportunity to submit information and argument on matters relevant to a particular determination of dumping, subsidization, or injury. Although such parties are not ''parties to the proceeding'' as defined in the statute, the Department recognizes, as pointed out by one commentator, ''that industrial users' comments are a potential authoritative source for available factual information supporting Department determinations.'' The importance of input from industrial users and consumer organizations is recognized in both the AD Agreement, at Article 6.12, and the SCM Agreement, at Article 12.10. The SAA, at 871, while emphasizing that section 777(h) of the Act does not confer ''interested party'' status on such users and organizations, explains that this provision explicitly requires the Department to furnish such users and organizations with an opportunity to provide relevant information.

Paragraph (b) indicates that industrial users and representative consumer organizations may submit to the Department relevant factual information and relevant written argument in the form of case and rebuttal briefs. Paragraph (b) also makes clear that all such submissions must be filed in accordance with the procedural rules in § 351.303.

One commentator noted that the opportunity under the Act for such users and organizations to submit relevant information would not be meaningful if the Department did not respond to such information. With respect to this comment, the Department will include in the record of a proceeding Information submitted by industrial users and consumer organizations, and the Department may rely on such information as appropriate. Furthermore, the Department intends to address relevant comments made by industrial users and consumer organizations in making its determinations in the same manner that it considers and responds to ''interested party'' comments.

Paragraph (c) clarifies that industrial users and consumer organizations may submit business proprietary information, but neither they nor their representatives will be granted access under APO to business proprietary information submitted by other persons.

Part 351, Subpart D—Calculation of Export Price, Constructed Export Price, Fair Value and Normal Value

Subpart D deals with the calculation of export price, constructed export price (''CEP''), fair value and normal value, and corresponds to subpart D of Part 353 of the Department's existing regulations.

Section 351.401

Section 351.401 deals with general principles common to the identification and calculation of export price, constructed export price and normal value. In this regard, although the URAA changed the names of purchase price and exporter's sales price to export price and constructed export price, respectively, to conform to the terminology of the AD Agreement, the SAA is clear that ''no change is intended in the circumstances under which export price (formerly ''purchase price'') versus constructed export price (formerly ''exporter's sales price'') are used.'' SAA at 822–23. Several commentators have argued that the Department should abandon its prior practice (often called ''indirect purchase price'') under which the Department considered certain sales to be ''purchase price'' sales, even though there was some involvement by a U.S. affiliate. Other commentators have pointed to the language of the SAA as support for their conclusion that this aspect of the distinction between export price and constructed export price remains under the URAA.

The Department agrees with these latter commentators that Congress and the Administration did not intend a change to the circumstances under which the Department would use export price or constructed export price, including the ''indirect purchase price'' situations. It has been the Department's longstanding and well-recognized practice that a transaction will be considered an export price sale, despite the involvement of an affiliate in the United States where: (1) The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the physical inventory of the related selling agent; (2) this was the customary commercial channel for sales of this merchandise between the parties involved; and (3) the related selling agent in the United States acted only as a processor of documentation and a communication link with the unrelated buyer. Because no change from current practice is required, the regulations do not address this issue.

Paragraph (b) codifies the Department's longstanding practice of requiring parties claiming an adjustment to provide sufficient support for that claim. This regulation is not intended to change the Department's practice as recognized by the courts. *See e.g., Timken* v. *United States,* 673 F. Supp. 495, 513 (CIT 1987). Because the relevant information is normally under the sole control of the respondent interested party, this practice is usually applied to adjustments that would benefit such a party. This regulation is not intended to impose any additional burden on domestic interested parties that do not have access to the relevant information. Paragraph (b) also codifies the Department's longstanding prohibition against double-counting adjustments.

Under paragraph (c), the Department will continue its practice of adjusting reported gross prices for discounts, rebates and certain post-sale adjustments to price that affect the net price. Where such discounts, rebates and price adjustments are granted on a transaction-specific basis, they should be reported on that basis. However, as with selling expenses, the Department will continue its current practice of allowing non-distortive allocations where transaction-specific reporting is not feasible. SAA at 823–24. Where verification is conducted, the Department will review the

respondent's records to ensure that discounts, rebates and post-sale price adjustments are reported on as specific a basis as those records permit.

Paragraph (d) provides that the Department will not adjust costs used as the basis for adjustments to factor in delayed or early payment of expenses. Certain parties have argued that, when a party incurs an expense but does not pay for it immediately, the Department should reduce the amount of the adjustment to account for the savings that accrue due to the delayed payment. However, the courts have upheld the Department's position that the statute does not require that level of precision in quantifying adjustments. *See, Federal Mogul* v. *United States,* 839 F. Supp. 881, 886 (CIT 1993).

Paragraph (e) deals with the adjustment for movement expenses described in section 772(c)(2)(A) of the Act for export price and constructed export price calculations, and section 773(a)(6)(B)(ii) of the Act for normal value calculations. Consistent with the SAA, at 823 and 827, paragraph (e) clarifies that the deduction for movement expenses includes a deduction for all warehousing expenses incurred after the merchandise leaves the producer's factory, or, in the case of a reseller, the point from which the reseller shipped the merchandise. This paragraph also clarifies that the phrase ''original place of shipment'' in the Act refers to the place of shipment from the party making the sale which is the subject of the Department's examination. This is intended to clarify that, where the sale to the United States which is being examined is made by a reseller, movement expenses from the producer to the reseller are not deducted. This is appropriate because such expenses are part of the seller's cost of acquisition.

Paragraph (f) describes the situations in which the Department will treat multiple affiliated producers as a single entity. Under prior practice, the Department, in certain situations, would treat related producers that were separate legal entities as a single entity; *i.e.,* the Department would ''collapse'' the producers into a single firm. Where firms were so collapsed, the Department would issue a single questionnaire to, and calculate a single weighted-average dumping margin for, the collapsed entity. Paragraph (f) codifies the Department's approach regarding such producers, based on the new statutory term ''affiliated persons.'' In order to be treated as a single entity, the producers must be affiliated and have production facilities that are sufficiently similar that shifting production would not require substantial retooling. Although such decisions are almost always made on the basis of the subject merchandise and foreign like product, or on a more narrow basis, in rare situations the Department may conclude that a product that is not subject merchandise or a foreign like product is sufficiently similar to subject merchandise that the producers of those products may be candidates for collapsing. This paragraph does not address the Department's ability to ''collapse'' resellers, without production facilities, and their affiliated producers, although the considerations identified in paragraphs (f) (1), (2) and (3) would be among those considered in reaching such a decision. Similarly, this paragraph does not address the issue of whether a producer or exporter in a nonmarket economy country is entitled to an individual antidumping rate. That determination is addressed by the definition of ''rates'' in section 351.102.

Section 351.401(g) provides that, in accordance with the Department's past practice, respondents may allocate expenses if transaction-specific reporting is not feasible. Where verification is conducted, the Department will verify that expenses are reported on as specific a basis as permitted by the company's records and that the allocation does not distort the comparison. This is in accordance with the SAA, at 828, which states that the Department may continue its practice of permitting allocations, ''provided that the allocation method does not cause inaccuracies or distortions.''

Some commentators argued for a regulation providing that certain direct selling expenses never could be reported on an allocated basis, but instead always must be reported on a transaction-specific basis. Other commentators argued for a regulation permitting the reporting of adjustments on an allocated or average basis. Yet another commentator argued for a regulation that would permit customer-specific allocations, even if based on in-scope and out-of-scope merchandise, if the Department determines that such an allocation is reasonable and has a minimal potential for creating a distorting effect.

Consistent with the SAA, at 823–824, paragraph (g) provides that, in order to qualify as a direct selling expense, an expense ''normally'' must be reported on a transaction-specific basis. However, as noted above, the Department may consider allocated expenses as direct selling expenses when transaction-specific reporting is not feasible. In determining what is feasible, the Secretary may balance the difficulties of reporting transaction-specific expenses against the potential inaccuracies of reporting allocated expenses.

New paragraph (h) deals with the Department's treatment of subprocessors or ''tollers.'' Several commentators expressed support for the Department's recent decision that tolling operations (*i.e.,* subcontractors) should not be treated as manufacturers or producers of the subject merchandise. The Department concurs with those commentators who urged that, because this policy has not been widely publicized, that it be enunciated in the regulations. Under paragraph (h), where a party owning the components of subject merchandise has a subcontractor manufacture or assemble that merchandise for a fee, the Department will consider the owner to be the manufacturer, because that party has ultimate control over how the merchandise is produced and the manner in which it is ultimately sold. The Department will not consider the subcontractor to be the manufacturer or producer, regardless of the proportion of production attributable to the subcontracted operation or the location of the subcontractor or owner of the goods. For example, where Firm A sends raw materials to a subcontractor for finishing before Firm A sells the finished goods to the United States, the Department will base export price or constructed export price on the price charged by Firm A (or its U.S. affiliate) for the finished goods. Similarly, the Department will base normal value on Firm A's sales of the finished goods in its home market (subject to the viability determination described in section 351.404).

Paragraph (i) establishes how the Department will identify the date of sale for sales of the subject merchandise and foreign like product. Under this provision, the Department will normally rely on the date of invoice. This is a change from prior practice under which the Department based the date of sale on the date on which the ''essential terms of sale'' (normally price and quantity) were established. *See,* Certain Forged Steel Crankshafts from the Federal Republic of Germany, 52 FR 28170, 28172 (1987). Several commentators argued that this methodology delayed proceedings, increased the cost to the respondents, complicated verification, and was unpredictable. In response to these concerns, paragraph (i) provides that the Department normally will use the date of invoice as the date of sale. However, the Department recognizes that this date may not be appropriate in some circumstances, such as those

involving certain long-term contracts or sales in which there is an exceptionally long time between the date of invoice and the date of shipment. Paragraph (i) provides the Department with sufficient flexibility to handle such situations.

Some commentators suggested that the Department use as the date of sale whatever date a respondent uses in its internal records. However, this approach would create a high degree of unpredictability and inconsistency among respondents, and it might be subject to manipulation. The date of invoice is easily verifiable, and, in the Department's experience, is clearly recorded in most respondents' records. With respect to the concerns of one commentator that use of a respondent's invoice date could make the date of sale subject to manipulation, the Department intends to verify that the records upon which the date of invoice are based were kept in the ordinary course of business. Additionally, particularly during administrative reviews, the Department will carefully scrutinize any change in record keeping that could change the date of invoice.

Section 351.402

Section 351.402 deals with certain adjustments that the Department will make in calculating export price and constructed export price under section 772 of the Act.

Paragraph (b) clarifies the expenses that the Department will deduct from the price to the unaffiliated purchaser (*i.e.*, the ''starting price'') in calculating constructed export price under section 772(d) of the Act. Consistent with the SAA at 823, the Department will make deductions under section 772(d) for those expenses enumerated in the Act which are due to economic activities in the United States. Thus, commissions, direct selling expenses, assumptions of expenses on behalf of the buyer, and indirect selling expenses attributable to the sale to the unaffiliated purchaser in the United States will be deducted in calculating the constructed export price. This deduction will be made irrespective of when the expenses are incurred, or where payment is made. The cost of advertising in the United States, for example, may be deducted under section 772(d) even if the advertising is paid for outside of the United States. However, the foreign seller's expenses associated with selling to the affiliated reseller in the United States would not be deducted under section 772(d), rather, they would be dealt with as circumstance of sale adjustments under section 773(a)(6)(C)(iii) of the Act.

The manner in which the Department intends to implement the special rule for merchandise with value added after importation contained in section 772(e) of the Act is explained in some detail in paragraph (c). Under that section, where a substantial amount of value is added by a process of further manufacture or assembly in the United States, the Department may use surrogates for the constructed export price, rather than perform the extensive calculation required to deduct the actual value added in the United States. Paragraph (c)(1) clarifies that deduction for value added in the United States and the special rule may apply where the actual importer or purchaser, for example a subcontractor, is not affiliated with the exporter, but is acting on behalf of the affiliated party in the United States.

Paragraph (c)(2) explains how the Department will make an estimation of whether the value added in the United States ''exceeds substantially'' the value of the subject merchandise. The SAA explains that, ''[w]hile Commerce is not required to calculate precisely the value added after importation into the United States, 'exceed substantially' means that the value added in the United States is estimated to be substantially more than half of the price of the merchandise as sold in the United States.'' SAA at 826. For purposes of this estimation, the Department will normally calculate the value added by subtracting the average net price at which subject merchandise is sold to affiliated importers who undertake further manufacturing, from the average net price at which the merchandise with value added is eventually sold to unaffiliated customers in the United States. Other than reduction for discounts, rebates and other post-sale price adjustments, no adjustments will be made to these prices. Where this average difference (*i.e.*, value added in the United States) is at least 60 percent of the average price to unaffiliated customers, the special rule normally will be applied to all merchandise with value added in the United States. Usually, the Department will calculate these averages across the subject merchandise sold with value added. However, where there are significant disparities in price between subject merchandise or the value added products, the Department retains the discretion to base the averages on smaller groupings of products.

Paragraph (c)(3) explains that, for merchandise to which the Department has determined the special rule applies, it will normally assign a margin equal to the weighted-average margin calculated based upon the prices of identical or other subject merchandise sold to unaffiliated parties. This is equivalent to using the price of sales to unaffiliated parties, along with all other terms and conditions of those sales, and calculating the margins based on those surrogate prices, terms and conditions. Because such margins will have been calculated for those sales to unaffiliated parties, the Department will not need to repeat the calculation for the sales to which the special rule applies. The Department believes this approach is appropriate, because a price cannot be dissociated from the terms and conditions that gave rise to that price. For example, a price for one product cannot simply be substituted as an appropriate price for a different product. If the Department were simply to adopt a price for a different product and then analyze the sale, there would be a question as to whether the price should be adjusted to account for the difference in merchandise to avoid distortion. Adjustments for other differences between the surrogate sales and the special rule sales also might be necessary. Making such adjustments would unduly complicate the analysis under this provision, which is intended to simplify the process.

Paragraph (d) elaborates on the procedure the Department will follow in deducting profit to arrive at a constructed export price under sections 772(d)(3) and 772(f). Various commentators have urged that the regulations provide further guidance regarding the profit deduction. Paragraph (d)(1) specifies, in accordance with section 772(f) of the Act, that both the expenses used to allocate the profit to the U.S. sales, and the profit to be allocated normally will be based upon all sales of the subject merchandise in the United States and the foreign like product in the foreign market. This clarifies explicitly, as suggested by some commentators, that losses in one market would offset profits in another. This is clearly contemplated by the term ''total actual profit'' in section 772(f) of the Act, and is reinforced by the reference in the SAA, at 825, to situations in which there is no profit. Some commentators suggested that the regulations clarify whether a profit ratio or per-unit profit will be used. This change to the rule is unnecessary, but in accordance with section 772(f)(2) of the statute, the Department will apply a profit ratio, *e.g.* profit divided by selling expenses.

In calculating profit, this paragraph specifies that the Department will not disregard home market sales below cost. Although some commentators suggested that below-cost sales should be disregarded when determining total

actual profit, there is no provision in the statute for disregarding sales below cost in this context, and doing so would conflict with the statutory requirement to use ''actual profit.''

Paragraph (d)(2) specifies that the Department will not be limited to audited financial statements, but may use any appropriate financial report, including internal reports, the accuracy of which can be verified, if verification is conducted. This provision reflects the suggestion of commentators that the Department make clear its discretion to use financial reports prepared in the normal course of business that are as specific as possible to the merchandise under investigation or review.

Finally, paragraph (d)(3) recognizes the obligations of the Department not to require the reporting of costs solely to make the profit deduction, and, where practicable, to use costs that are submitted voluntarily for purposes of calculating profit. However, to ensure that voluntary submissions of cost data can be used for this purpose, the Secretary will specify deadlines after which such voluntary submissions will no longer be accepted. The Department has not adopted a rule, proposed by one commentator, that the Department not be allowed to initiate an investigation of sales below cost based on an allegation derived from cost information submitted voluntarily for this purpose. If the information submitted voluntarily supports a sufficient allegation that home market sales have been made below cost, then the Department is required to initiate a cost investigation.

Various commentators suggested that the regulations specify the costs that will be subtracted from revenues to determine total actual profit. Although the Department has not elaborated on the guidance provided in section 773(b)(3) of the Act with respect to cost of production and section 773(e) of the Act with respect to constructed value, the Department will develop an appropriate treatment of particular expenses through practice, as it has done with cost of production and constructed value.

A number of commentators contended that the Department should cap the amount of profit deducted at the amount of profit actually earned on each U.S. sale. Other commentators argued for an adjustment to normal value to offset any distortion caused by the profit allocation method required by the statute. These commentators claimed that failure to make such an adjustment to normal value would lead to double-counting of profit.

Article 2.4 of the Agreement provides for the deduction of profit and selling expenses associated with economic activities in the export market in order to construct an export price. The statute implements the Agreement by requiring that the profit calculation for constructing an export price be computed based on the combined profits of the exporter on sales to both the U.S. and home markets. The SAA, at page 825, prohibits a cap based on the transfer price by stating that ''the transfer price between exporters or producers and the affiliated importer is irrelevant in determining the amount of profit to be deducted'' in constructing an export price. Further, the statute does not provide for an adjustment to normal value in the manner suggested.

Some commentators also suggested that the regulations state that profit will be deducted in calculating CEP only when the importer is affiliated with the exporter. They argue that this is necessary to ensure that the profit of an unaffiliated consignment importer will not be deducted twice. While the Department fully agrees with this comment, the regulations do not include such a provision, because the statute clearly limits the profit deduction to profits allocated to expenses incurred by the producer, exporter, or affiliated seller.

One commentator suggested that the regulations explain whether profits in the home market or a third country market will be used when there are few sales in the home market, *i.e.*, that market is not ''viable'' under section 351.404, discussed below. The statute does not clearly address this question, and as this is a new provision with which the Department has no experience, the Department will address this question after gaining experience in its administration.

Paragraph (e) explains how the Department will treat payments between affiliated parties for purposes of section 772(d) of the Act. This provision explains that the Department will normally base the deduction of expenses on the cost to the affiliate, rather than on any payment to the affiliate. However, where the Department is satisfied that the exporter does not have access to that information, the Department may use the payment to the affiliated party if that payment represents an arm's-length price for the service provided by the affiliated party. The Department will determine whether the price is arm's length by a comparison of the price at issue with prices for similar services paid to unaffiliated providers, or with prices charged by the affiliate to unaffiliated parties. Thus, under this provision, where an affiliated importer sells the subject merchandise on commission, the Department will normally use the selling expenses of the affiliated importer, but may use the amount of the commission, if the conditions identified above exist.

Paragraph (f) provides that the Department will deduct from the export price (or the constructed export price) any antidumping or countervailing duties paid on behalf of the importer, or reimbursed to the importer, by the producer or exporter and sets out an exception and the procedures to be applied in that situation. Other than the changes in language required by the URAA, the provision with respect to antidumping duties is unchanged from § 353.26 of the existing regulations. The requirement that such countervailing duties be deducted from the export price (or constructed export price) is new.

Under section 772(c)(1)(C) of the Act, the Department increases the price used to calculate export price (or constructed export price) by the amount of any countervailing duty imposed to offset an export subsidy. The countervailing duty paid by the importer has the effect of increasing the price to the importer by the amount of that duty. If the producer or exporter pays or reimburses the duty, the price has not been increased and a deduction in the amount of the duty paid or reimbursed by the producer or exporter, to offset the addition made under section 772(c)(1)(C), is appropriate to arrive at the correct export price (or constructed export price). As with antidumping duties, the statute authorizes no adjustment to export price (or constructed export price) for countervailing duties imposed to offset other types of subsidies. And just as with antidumping duties, payment of those countervailing duties by the exporter or producer on behalf of the importer represents an effective reduction in the price to the unaffiliated purchaser. Thus, in both instances it is appropriate to take the deduction described in paragraph (f).

Section 351.403

With respect to the calculation of normal value, § 351.403 sets forth, without substantive change, the regulations regarding sales and offers for sale and the regulations regarding use of sales to or through an affiliated party. However, as discussed above with respect to section 351.102, differences between the old term ''related party'' and the new term ''affiliated party'' may have an impact in this area. The provisions corresponding to § 351.403 are currently contained in §§ 353.43(a) and 353.45 of the existing regulations.

Because other provisions of 353.43 have been added to the statute, they are not restated in these proposed regulations.

Several commentators suggested that the Department adopt a regulation allowing respondents not to report ''downstream'' sales (*i.e.* sales by affiliated parties of merchandise purchased from the respondent) if the quantity of sales to affiliated parties is below a certain threshold percentage of sales to unaffiliated parties. Others suggested, in contrast, that the Department require that downstream sales always be reported. Because factors other than value, such as comparability of sales, affect this decision, neither proposal is reflected in the regulations. However, the Department will continue to consider this important issue, which has implications both for the accuracy of its calculation and the reasonableness of its information requirements. The Department encourages the submission of comments on this matter.

Similarly, several commentators recommended methodologies for determining when a price to an affiliated party should be considered comparable to the price at which merchandise is sold to unaffiliated parties; *i.e.* when a price is at ''arm's length.'' Because of the complexity of this issue, and because the Department's practice in this area is still evolving, the Department has not addressed this issue in these proposed regulations. However, the Department will continue to consider this issue for the final regulations.

Section 351.404

Section 351.404 sets forth in combined form the requirements of sections 773(a)(1)(B) and (a)(1)(C) of the Act regarding whether sales in the exporting country or in a third country may be used as a basis for normal value. This provision modifies §§ 353.48 and 353.49 of the Department's existing regulations.

The antidumping statute has long required the Department in calculating foreign market value (now normal value) to avoid the use of markets in which there are few sales (*i.e.*, markets that are not ''viable''). Paragraph (b)(1) sets forth the general condition under which the Secretary will find a market to be viable, that is, when satisfied that the sales in the exporting or third country market are of sufficient quantity to form the basis for normal value.

Paragraph (b)(2) defines the sufficient quantity standard as satisfied when the aggregate quantity (or value) of foreign like product sold in or to the foreign country is five percent or more of the aggregate quantity (or value) of subject merchandise sold to the United States. Under the prior statute and regulations, viability was established by comparing the quantity of sales in the exporting country to the quantity of sales to all export markets except the United States. In accordance with the URAA, the comparison in paragraph (b)(2) is between sales in the foreign market and sales to the United States.

The URAA also changed the comparison that the Department will make in deciding if the sales in the foreign market are in sufficient quantities. Under prior practice, the comparison was normally made between sales of ''such or similar'' merchandise. Under the URAA, the comparison will be between sales of the foreign like product in the foreign market and sales of subject merchandise to the United States. Some commentators have argued that the Department should measure viability on the basis of categories of merchandise smaller than the foreign like product. However, as other commentators pointed out, the statute is explicit that the Department determine market viability for each respondent on the basis of the aggregate quantity (or value) of the foreign like product. Moreover, the SAA, at 821–22, states that, ''[t]he viability of a market will be assessed based on sales of all merchandise subject to an antidumping proceeding, not on a product-by-product or model-by-model basis.'' Commentators noted that the Department's calculations would become extremely complex if, for a given respondent, the normal value for some U.S. sales were to be based in the home market, while the normal value for other U.S. sales were to be based in a third country. Finally, because basing this test on sales of the foreign like product will require less disaggregated data, it will allow the Department to make the viability determination earlier in the proceeding.

Paragraph (b)(2) reflects the preference contained in the statute for measuring viability on the basis of quantity. Several commentators argued that the Department should retain the flexibility to measure viability on the basis of value. While the Department may use value, the statute provides that value may be used only where quantity is not appropriate. The SAA makes clear, however, that quantity is to be defined broadly, and may be measured on the basis of number of items, weight or such other bases that the Department considers appropriate.

Some commentators have argued that the Department must retain the flexibility to use a test other than five percent. While five percent has long proven to be a satisfactory measure of viability, in unusual situations the Secretary may apply a number less than or greater than five percent. This is consistent with the SAA, at 821, which indicates that such situations will be ''unusual,'' and which reflects the fact that the Department has successfully applied the five percent threshold in the past. It also reflects the need for an early decision with respect to the market in which normal value will be established, because respondents must provide data relative to sales in that market.

Paragraph (c)(1) stipulates that if the Department finds a viable exporting-country market, it will calculate normal value on the basis of prices in that exporting country. If the Department finds that the exporting-country market is not viable, but that a third-country market is viable, it may calculate normal value on the basis of prices to the third country. The use of the word ''may'' in the third country provision reflects the language of section 773(a)(4) of the Act, which provides that the normal value may be the constructed value of the subject merchandise even if a third country market is viable. Paragraph (c)(1) is not intended to address circumstances in which prices must be disregarded because they are below the cost of production, as discussed in connection with section 351.406, below.

Paragraph (c)(2) provides that if the Department finds a viable market, it may decline to calculate normal value on the basis of prices in or to that market in certain circumstances. For both the exporting country and a third country, if parties establish to the Secretary's satisfaction that the particular market situation would not permit a proper comparison, the Department may decline to use sales in the relevant market as the basis for normal value. The SAA, at 822, cites as possible examples of such situations a single sale in the foreign market which meets the five percent threshold, extensive government control over pricing that does not permit competitive forces to affect prices, and differing patterns of demand in the United States and the foreign market. Also, if parties establish to the Secretary's satisfaction that prices to a third country are not representative, the Department may decline to use sales to that country.

As explained above in connection with paragraph (b), normally a finding that the foreign market sales constitute five percent or more of sales to the United States will be considered determinative with respect to the issue of viability. The Department will review another factor only if a party

convincingly demonstrates that that factor mitigates against reliance on the five percent standard. This is in accordance with the Department's experience, the language of the SAA, at 821, and the need for early viability determinations. The SAA explains that ''sales in the home market 'normally' will be considered of sufficient quantity to render the home market viable if they are five percent or more of sales to the United States. The Administration intends that Commerce will normally use the five percent threshold except where some unusual situation renders its application inappropriate.'' Therefore, unless a party presents convincing evidence that some aspect of the market in question is so unusual as to make that market an inappropriate basis for comparison and the five percent test inappropriate, the Department will rely on the results of the five percent test in determining whether the foreign market is an appropriate basis for normal value. Placing primary reliance on the five percent test is also consistent with the need to make the viability determination early in a proceeding so that respondents can provide the necessary sales information and the Department can meet its statutory deadlines.

In furtherance of the need to make viability determinations early in an investigation or review, paragraph (d) references the deadline for filing any allegation (along with all supporting factual information) regarding market viability, including an allegation that one of the exceptions in paragraph (c)(2) applies. That deadline (40 days after a questionnaire is issued) is contained in § 351.301(d)(1). The deadline, while short, is approximately two weeks after the general information response to the questionnaire is normally due. If the Department extends the deadline for responding to that section of the questionnaire, it also will extend the time for making an allegation regarding market viability. Among the allegations covered by §§ 351.301(d) and 351.404(d) are arguments that some number other than five percent should be used to determine viability, or that viability should be determined based on the value, rather than quantity, of sales.

Paragraph (e) outlines factors for consideration when several third country markets are viable. These criteria are slightly modified from those found in § 353.49(b) of the Department's prior regulations. In the past, the Department has most often found that the largest third country market is the best basis for comparison with the United States. However, in a few situations, the Department has discovered that other factors mitigate against selection of the largest market. For example, where sales to a particular third country market are of merchandise that is very similar to that sold to the United States, the use of that third country market may be more appropriate, even if it is not the largest market.

Several commentators argued that the Department should retain the criteria found in the existing regulations for selecting a third country. In this regard, we note that the criterion that sales to the selected third country market be of sufficient quantity is now encompassed in the five percent test, which now applies to third country markets as well as the home market. The criterion that the selected market be like the United States in terms of organization and development is now reflected in the requirement of paragraph (c)(2) that there not be a market situation which prevents a proper comparison. In addition, paragraph (e) provides that the Department may consider other criteria for selection of a third country market that are relevant to a particular case. As in the past, while the Department will consider all relevant criteria, not all of the criteria of this section need be present in the selected market, and none is dispositive.

Paragraph (f), based on § 353.48(b) of the existing regulations, indicates that the Department normally will choose to calculate normal value based on sales to a viable third country market rather than on constructed value. The change in terminology (i.e., the deletion of ''prefer'') is intended to reaffirm that the Department retains the discretion to select constructed value over a third country price-to-price comparison in appropriate circumstances. However, once the Department chooses a comparison market, it will not reexamine the issue of viability. Thus, if the Department finds that it must disregard sales in the selected foreign market of a product that is most similar to the subject merchandise (e.g., because the sales are below cost), the Department will apply constructed value rather than seek sales in another market or use sales of less similar merchandise. This policy is discussed in more detail below in connection with § 351.406 (''comparison of merchandise'').

Section 351.405

Section 351.405 deals with the calculation of normal value based on constructed value, and modifies § 353.50 of the Department's existing regulations.

Under section 773(e)(2)(A) of the Act, as a general rule the Department will base amounts for profit and selling, general and administrative expenses (''SG&A'') on the actual amounts incurred and realized by the specific exporter or producer in connection with the production and sale of a foreign like product in the ordinary course of trade. For ease of discussion, this general rule will be referred to as the ''preferred methodology.'' If data regarding a specific company's actual profit and SG&A are not available, section 773(e)(2)(B) of the Act provides three alternative methods for calculating these amounts (the ''alternative methods''). As stated in the SAA, at 840, the statute does not establish a hierarchy or preference among the three alternative methods.

Paragraph (b) clarifies an issue regarding the market that will form the basis for the calculation of profit and SG&A under the preferred methodology and under the alternative methods. Specifically, paragraph (b)(1) provides that in applying the preferred methodology, sales in the country in which the merchandise is produced or a third country, as appropriate, will form the basis for the calculation of profit and SG&A. In contrast, paragraph (b)(2) provides that in applying the alternative methods, only sales in the country in which the merchandise is produced will form the basis for the calculation of profit and SG&A (or in the case of the third alternative method, the basis of the so-called profit cap).

The issue arises because of the use in the statute of identical language that the Department interprets differently in different situations. Specifically, the statute states that with respect to both the preferred methodology and the alternative methods, profit and SG&A shall be based on sales ''for consumption in the foreign country.'' The SAA, at 840, provides that in the context of the three alternative methods, profit and SG&A shall be based on ''home market'' sales; *i.e.*, sales in the country in which the merchandise is produced. Article 2.2.2 of the AD Agreement similarly indicates that with respect to the three alternative methods, the appropriate market is the ''domestic market of the country of origin.'' Both the SAA and the AD Agreement are silent, however, on the market in which to calculate profit and SG&A with respect to the preferred methodology. Therefore, the Department intends to maintain its current practice of using home market or third country sales as the basis for profit and SG&A, as appropriate. Specifically, when an exporter's third country market forms

the basis for normal value and the Department resorts to constructed value due to below-cost third country sales or model matching considerations, the Department will use third country sales as the basis for profit and SG&A. Use of third country sales in these situations is the most accurate and practical approach for both the Department and the respondent.

In practice, the Department can derive an actual amount of profit by subtracting the cost (derived from COP data) from the home market sales price (derived from the home market sales data) to arrive at a net profit for each transaction examined. The Department will use the net profit figures to derive a per unit amount for profit. The Department will derive an ''actual'' amount of G&A by dividing the G&A from a company's financial statements by the cost of goods sold to arrive at a G&A ratio. The Department then will apply this ratio to total cost of manufacture on a per unit basis. The actual amounts for per unit selling expenses can be derived from the home market sales list. This leaves the question of whether the ''actual amounts'' for profit and SG&A should be based on a model-specific or aggregate-figure basis.

One commentator argued that the Department should not calculate SG&A expenses exclusive of those sales that the Department disregards as being below cost, because these expenses rarely relate directly to individual sales. Another commentator, however, argued that SG&A and profit should be obtained from the same, or comparable, pool of sales.

The Department's practice has been to use aggregate figures. Notably, section 773(e)(1)(B) of the pre-URAA statute provided for calculation of an amount for profit and SG&A ''equal to that usually reflected in sales of merchandise of the *same general class or kind* as the merchandise under consideration'' (emphasis added). In comparison, section 772(e)(2)(A) of the amended Act provides for use of the actual amounts incurred and realized for profit and SG&A ''in connection with the production and sale of a foreign like product.'' The use of ''a'' arguably could be interpreted to mean a particular model. The SAA, on the other hand, refers to actual amounts incurred, ''in selling the particular merchandise in question (foreign like product).'' SAA, at 839. This language supports a view that the use of ''a'' was not intended to overturn our prior practice of relying on aggregate figures for profit and SG&A. Moreover, if ''a'' were to be interpreted literally, the Department would have the discretion to pick and choose the sale of the foreign like product from which profit and SG&A would be taken. This clearly would undermine the predictability of the statute. Given these distinctions, the amended Act arguably provides for a narrower basis for the calculation of profit and SG&A than did the prior statute. Therefore, the Department intends to calculate profit and SG&A based on an average of the profits of foreign like products sold in the ordinary course of trade.

Both the pre-URAA statute and the amended Act provide that only sales ''in the ordinary course of trade'' be used as the basis for profit and SG&A. Under section 771(15) of the amended Act, however, the definition of ordinary course of trade has been expanded to require that the Department consider sales disregarded under the cost test to be *outside* the ordinary course of trade. A number of commentators argued that the profit and SG&A calculations should exclude all below-cost sales. The Department believes that automatic exclusion of below-cost sales would be contrary to the new statute. Specifically, in calculating profit and SG&A under the preferred and second alternative methods, the statute allows for exclusion of sales outside the ordinary course of trade. The statutory definition of ordinary course of trade, in turn, provides that only those below-cost sales that are ''disregarded under section 773(b)(1)'' of the Act are automatically considered to be outside the ordinary course of trade. In other words, the fact that sales are below cost does not automatically trigger exclusion; rather, the sales must have been disregarded under the cost test before they will be excluded from the calculation of profit and SG&A.

A number of commentators argued that the regulations should provide representative examples of sales that would be disregarded as not being in the ordinary course of trade, such as sales with abnormally high profits. One commentator suggested that the regulations define ''abnormally high profits.'' Another commentator, in contrast, argued that no sale should be disregarded because of abnormally high profits unless an affirmative showing is made on a sale-by-sale basis that the price was not set by normal market forces. The SAA, at 839–840, and 834, indicates that the Department could consider sales with abnormally high profits to be outside the ordinary course of trade, along with sales of off-quality merchandise, sales to affiliated parties not at arm's-length prices, sales of merchandise produced according to unusual product specifications, merchandise sold at aberrational prices and merchandise sold pursuant to unusual terms of sale. The Department does not believe that it is appropriate to include these examples in the regulations. As implied by the statute and the SAA, the Department has the discretion to consider sales and transactions, other than those specifically cited, to be outside the ordinary course of trade. The Department believes that it is more appropriate to make these ordinary course of trade determinations on a case-by-case basis.

A number of commentators proposed that the regulations should adopt a *de minimis* profit level of two percent, and that where the profit amount calculated by the Department using one methodology is *de minimis*, the Department should rely on an alternative methodology. The Department has not adopted this proposal. The new statute specifically eliminates the prior statutory minimum for profit, and, instead, requires the use of the ''actual'' amounts incurred and realized by a specific exporter or producer. Nowhere does the new statute authorize the Department to establish a new *de minimis* rule requiring the Department to reject an alternative for calculating profit if that alternative results in a low amount for profit.

As discussed above, section 773(e)(2)(B) of the Act provides for three alternative methods if data regarding a specific company's actual profit and SG&A are not available. One commentator suggested that the regulations should clarify the point at which the number of sales in the ordinary course of trade would be so small that the Department would disregard actual data in favor of an alternative method to calculate profit and SG&A. Another commentator argued that the regulations should provide that when actual data is not available for the calculation of profit, the Department must base its profit calculation on the company's financial records. Still another commentator argued that the regulations should clarify that only in exceptional circumstances will the Department resort to other producers' profits when calculating a respondent's profit. Finally, a number of commentators argued that the third alternative (''any other reasonable'' method) should be the company-wide profitability for the respondent in question for the most recent fiscal year, and that the Department should use this alternative only where profit cannot be determined under either of the other two

alternatives. As discussed above, the SAA, at 840, makes clear that the statute does not establish a hierarchy or preference among the three alternative methods, and that selection of an alternative must be made on a case-by-case basis. No one approach would be appropriate necessarily for use in all cases. As stated in the SAA, at 841, ''the Administration does not believe that it is appropriate at this time to establish particular methods and benchmarks for applying [the third] alternative [method].'' As the Department still has not had enough experience in this area to develop a practice, the Department believes that it is inappropriate to adopt these suggestions.

Under alternative methods one and three, profit and SG&A would be based on sales of products in the ''same general category of products as the subject merchandise.'' The SAA, at 840, indicates that this would be consistent with the existing practice of relying on a producer's sales of products in the same ''general class or kind.'' In addition, the SAA, at 840, indicates that the term ''general category of merchandise'' encompasses a category of merchandise broader than the term ''foreign like product.'' As a result, the Department intends to establish appropriate general categories on a case-by-case basis.

The SAA, at 841, provides that the Department should not require companies to submit all data necessary to apply each alternative. For example, the SAA states that the Department will not require a company which has provided profit information on its own sales of the particular foreign like product also to submit profit information on its sales of the same general category of products solely to enable the Department to use the latter information to calculate profit for a different company. One commentator suggested that the regulations reaffirm the commitment in the SAA that the Department will not make burdensome information requests about profits in the context of calculating constructed value. The commentator proposed, in particular, that the Department should pledge to use audited and readily-available profit data. However, a number of commentators expressed concern that respondents not be allowed to unilaterally determine what profit information to submit, and suggested that respondents be required to submit additional key information, including profit and loss operating statements, charts of accounts, and information demonstrating the company's cost of capital. One commentator argued that the regulations should require full cost reporting by all companies under investigation (or review) so that alternative two would be a viable option. Given the directive to refrain from requiring excessive additional reporting of data, the Department believes that it would be premature to adopt these proposals. As a practical matter, over time the Department will gain experience as to the appropriate type and quantity of data to request.

Section 351.406

Section 351.406 is new, and deals with the analysis of whether to disregard certain sales as below the cost of production under section 773(b) of the Act.

The Cost Test: Section 773(b)(1) of the Act provides that the Department may exclude below-cost sales from the determination of normal value if such sales occurred within an extended period of time in substantial quantities, and were not at prices which permit recovery of all costs within a reasonable period of time.

Paragraph (b) clarifies that the phrase ''extended period of time'' normally will coincide with the period over which sales under consideration for use in the calculation of normal value were made; *i.e.*, the period of investigation or review. Most comments on this issue were in accord with this approach. One commentator, however, stated that while there was a certain practical appeal to this approach, it would be more prudent for the Department to interpret the phrase ''extended period of time'' on a case-by-case basis. The SAA, at 831–32, states that for purposes of computing the quantity of below-cost sales, the Department will examine sales during the entire period of investigation or review. Thus, the SAA suggests that ''an extended period'' of time is intended to coincide with the investigative or administrative review period, as appropriate.

Two commentators raised the issue of whether below-cost sales must be made continuously throughout the period in order for the Department to consider such sales to have been made ''within an extended period of time.'' These commentators posed a scenario wherein a substantial quantity of below-cost sales were made during a single month of a twelve-month review period, and questioned whether, in such an instance, the Department would have a sufficient basis for disregarding those sales. Other commentators argued that, consistent with the SAA, the Department no longer was required to find that below-cost sales occurred in a minimum number of months before excluding such sales from its analysis. According to these commentators, the Department must disregard substantial quantities of below-cost sales even if made in only one month of the period of investigation or review.

The SAA, at 831–32, states that because below-cost sales need only occur ''within'' an extended period of time, the Department no longer must find that such sales occurred in a minimum number of months during the period. Thus, where the below-cost sales found during one month of the period meet the other requirements of the cost test (*i.e.*, substantial quantities and cost recovery), the Department would exclude such sales from its analysis.

Although not further addressed in these regulations, section 773(b)(1)(A) of the Act also requires that the Department determine whether below-cost sales have been made in substantial quantities. Under section 773(b)(2)(C)(i) of the Act, the Department will consider below-cost sales to have been made in ''substantial quantities'' if they account for 20 percent or more of the volume of sales under consideration for normal value. Under section 773(b)(2)(C)(ii) of the Act, the Department also may find below-cost sales to be in substantial quantities if the weighted average per unit price of the sales under consideration is less than the weighted average per unit COP of those sales.

In most cases, the Department intends to apply the 20 percent test in identifying those instances in which respondents sold substantial quantities of the merchandise at below-cost prices. In cases involving highly perishable agricultural products, however, the Department intends to apply the other substantial quantities benchmark (the weighted average price-to-cost test), which closely corresponds to the Department's previous substantial quantities benchmark for below-cost sales in cases involving highly perishable agricultural products. The Department's prior practice reflected the nature of perishable agricultural products, which often must be sold at below-cost prices in large quantities as the products begin to grow old and spoil.

Comments on the issue of substantial quantities were split. Some commentators argued that both substantial quantities tests should be applied in all cases. Other commentators maintained that under normal circumstances, the Department should apply only the 20 percent benchmark. These commentators contend that the language of the SAA limits the use of the weighted average

benchmark strictly to cases involving highly perishable agricultural products.

The SAA, at 832, states that the new weighted average price-to-cost benchmark, like the old 50 percent rule, is intended to account for the unique situation that exists with regard to below-cost sales of highly perishable agricultural products. As a result, the Department intends to apply this benchmark normally only in cases involving highly perishable agricultural products. However, because there may be other circumstances in which it would be appropriate to apply the weighted average price-to-cost benchmark, the Department has not established a bright line rule that would limit the use of this benchmark to cases involving highly perishable agricultural products.

Finally, in determining whether to exclude below-cost sales from the calculation of normal value, section 773(b)(1)(B) of the Act requires that the Department determine whether such sales, ''were not at prices which permit recovery of all costs within a reasonable period of time.'' New section 773(b)(2)(D) of the Act clarifies that prices shall be considered to provide for recovery of costs within a reasonable period of time if such prices which are below cost at the time of sale are above the weighted average per unit cost of production for the period of investigation or review. Under the statute, therefore, the Department's cost recovery test must consist of an analysis involving individual prices for specific below-cost sales transactions. This is consistent with the position taken by a number of commentators.

Regarding cost recovery, several commentators also made suggestions concerning the issue of adjustments to cost for ''periodic temporary disruptions to production'' and the treatment of ''unforeseen disruptions in production.'' The SAA, at 832, provides that before testing for cost recovery, the Department may adjust COP to take account of variations in per unit costs caused by ''temporary disruptions to production that occur on a less frequent than annual basis.'' The SAA cites major maintenance that occurs every three years as an example of such a temporary disruption, and notes that the respondent must demonstrate that the disruptions have ''recurred at regular and predictable intervals.'' The SAA also provides special treatment for unforeseen disruptions to production that are beyond the respondent's control. Here, the SAA cites as an example the destruction of respondent's production facilities by fire, and states that the Department will continue to adjust for such disruptions by relying on costs computed at a time prior to the unforeseen event.

One commentator submitted draft regulations outlining the above concepts from the SAA with regard to periodic disruptions in production and their effect on cost recovery. In response to this submission, another commentator argued that the proposed draft language was too restrictive of respondents' ability to demonstrate that below-cost sales should not be disregarded.

The Department believes that determinations involving periodic temporary disruptions to respondents' production costs are fact-specific in nature, and that while regulatory examples of such disruptions might give some guidance, they also might be interpreted as limiting the types of circumstances for which the Department will consider an adjustment. Moreover, in computing cost of production, the Department typically allows respondents to amortize or otherwise adjust for costs associated with major maintenance or other periodic activities that disrupt production. Thus, regulations providing specific examples of temporary disruptions might be interpreted as limiting these types of adjustments solely to the cost recovery analysis. The Department, therefore, has not included in its regulations specific provisions concerning adjustments to costs for periodic temporary disruptions in production. Nor do the regulations include any discussion of how the Department intends to treat costs associated with unforeseen disruptions in production. To do so in the context of cost recovery would conflict with explicit guidance given in the SAA, at 832, which states that the issue of unforeseen disruptions in production is ''not a matter of cost recovery.''

Initiation of Below-Cost Sales Investigation: The Department received several comments on the standard for determining whether an allegation of sales below cost provides reasonable grounds to initiate an investigation of sales below cost. These comments are discussed above in connection with section 351.301(d)(2).

Below-Cost Sales Disregarded and Ordinary Course of Trade: Section 773(b)(1) of the Act provides that where below-cost sales have been disregarded, the Department will base normal value on the remaining sales of the foreign like product made in the ordinary course of trade. However, if there are no remaining sales made in the ordinary course of trade, the Department will base normal value on constructed value. The Department's past practice was to disregard all sales of a product if below-cost sales exceeded 90 percent of the total sales quantity of the product. Under section 773(b)(1) of the Act, however, the Department is required to use any existing above-cost sales to compute normal value if such sales were made in the ordinary course of trade. Additionally, the SAA, at 833, states that only where there are no above-cost sales in the ordinary course of trade will the Department resort to constructed value as the basis for normal value.

Under section 771(15) of the Act, the term ''ordinary course of trade'' encompasses those below-cost sales that meet the criteria of section 773(b)(1) of the Act. Thus, in most instances, the Department will disregard such sales and compute normal value using only the remaining above-cost sales. The SAA, however, describes two circumstances under which this general rule may not apply.

The first circumstance involves sales of obsolete or year-end merchandise. The SAA, at 833, notes that sales of such merchandise are often made at below-cost prices. Despite this fact, the SAA explains that it is appropriate to use these below-cost sales as the basis for normal value where the merchandise exported to the United States is similarly obsolete or end-of-model year. The second circumstance, while not explicitly stated in the SAA, involves above-cost sales made outside the ordinary course of trade. The SAA, at 834, provides examples of sales that the Department might consider as being outside the ordinary course of trade. These include sales made at aberrational prices or with unusual terms of sale. Although such sales may pass the COP test under section 773(b)(1) of the Act, the Department normally would exclude them from the calculation of normal value. The Department has incorporated examples of sales that may be considered outside the ordinary course of trade as defined in § 351.102 of the regulations.

The Department received proposals from several commentators concerned about the determination of below-cost sales as outside the ordinary course of trade. Two of these commentators expressed the opinion that below-cost sales are a fundamental business reality, and, as such, companies set prices to obtain a reasonable return in the aggregate for their product line. The two commentators suggested that to account for this phenomenon in its antidumping analysis, the Department should adopt a two-tier test for substantial quantities. Under the first tier, the Department would look to see if below-cost sales in the comparison market were, in

aggregate, greater than twenty percent of all such sales. If so, the Department would determine that the overall pattern of sales in the comparison market were not in the ordinary course of trade, and then would apply the twenty percent substantial quantities benchmark to comparison market sales on a model-specific basis.

This suggestion drew sharp criticism from a number of other commentators, who maintained, among other things, that the exclusion test for sales below cost is to be applied on a model-specific basis. The Department agrees with these commentators that the proposed two-tier test would not be consistent with the SAA, at 832, which states that ''the cost test will generally be performed on no wider than a model-specific basis.'' Many of the commentators opposing the two-tier test recommended that the Department state in its regulations its intent to continue use of a model-specific cost test. The Department believes that such a regulation is not necessary, because the Department has used a model-specific cost test as part of its practice for a number of years, and has no intention of changing its practice on this issue.

The Department also received many comments relating to the use of remaining above-cost sales as the basis for normal value. Some commentators recommended that the Department's regulations reflect the language of the statute and the SAA by providing for the use of constructed value only where there were no comparison market sales made in the ordinary course of trade. Other commentators, however, urged the Department to avoid setting arbitrary and inflexible standards for determining when above-cost sales must be used to establish normal value. These commentators claimed that where there are only a few aberrational, high-priced sales above-cost, such sales may be totally unrepresentative as a basis for normal value. To avoid this problem, one of the commentators suggested that the Department use statistical concepts to identify when the price of a particular transaction is so far from the average price as to be deemed not in the ordinary course of trade.

In rebuttal, certain commentators argued that the Department should not exclude from consideration for normal value small numbers of above-cost sales simply because such sales were made at high prices. According to these commentators, any above-cost sales made in the ordinary course of trade should be used to compute normal value. The commentators further argued that the Department should reject the ''simple statistical'' tests proposed by other commentators, because this approach is contrary to the usual practice of examining a wide host of factors to determine whether sales are in the ordinary course of trade.

Section 773(b)(1) of the Act indicates that the Department is to disregard sales made outside the ordinary course of trade when computing normal value. In addition, section 773(b)(1) of the Act provides for the use of constructed value only where there are no above-cost sales remaining in the ordinary course of trade. However, in cases where the few remaining above-cost sales are made at aberrationally high prices, the SAA provides that these sales may be excluded from consideration for normal value if they are determined to be outside the ordinary course of trade. This determination typically will depend on specific facts regarding the product, the industry, the terms of sale, and any number of other considerations, including, perhaps, statistical analyses of prices. Thus, to base the ordinary course of trade analysis solely on statistical concepts would be inappropriate, at least at this time. Moreover, without the experience that comes from actual cases, it would be foolhardy to define specific criteria for deciding which above-cost sales are ''aberrational'' and which are in the ordinary course of trade.

Finally, one commentator suggested that before conducting its cost analysis, the Department should exclude sales made outside the ordinary course of trade (other than below cost sales). This commentator argued that including such sales in the below-cost test effectively double-counts the sales not made in the ordinary course of trade. Commentators opposing this suggestion stated that it is not in accordance with the new statute. The Department agrees that this suggestion is not supported by the statute. Section 773(b)(1) of the Act instructs the Department to determine whether sales of the foreign like product have been made at less than the cost of production. Nowhere does the statute suggest that the Department should perform its cost analysis only on sales in the ordinary course of trade.

Comparison of Merchandise: Two commentators suggested that the regulations provide the Department with the alternative of using the next most similar category of products for comparison purposes, rather than automatically resorting to the use of constructed value (''CV'') when there are no above-cost sales for a particular model. In opposing this recommendation, one commentator argued that, in accordance with the statute, product matching occurs without regard to the exclusion of below-cost sales.

Under section 773(a) of the Act, the Department is authorized only to compare the merchandise under investigation to the foreign like product. The suggestion of one commentator that where the most similar merchandise can not be used for comparison because there are insufficient sales above the cost of production, the Department may use less similar merchandise as comparison models is incompatible with the statutory scheme. Section 771(16) directs the Department to base its comparisons on the first of three categories in which there is merchandise that may be satisfactorily compared with the subject merchandise (*see* section 771(16) of the Act, with respect to which the only change brought about by the URAA was the substitution of the term ''foreign like product'' for the term ''such or similar merchandise''). Most favored is ''merchandise which is identical in physical characteristics'' and ''produced in the same country by the same person'' as the merchandise under investigation. If there were no sales of merchandise with identical physical characteristics, the Department must select merchandise that meets the conditions set forth in section 771(16)(B) of the Act; *i.e.,* like the merchandise under investigation and approximately equal in commercial value. If no merchandise qualifies under section 771(16)(B), the Department must select merchandise that meets the conditions set forth in section 771(16)(C) of the Act; *i.e.,* of the same general class or kind, similar in use, and reasonably comparable with the merchandise under investigation. The Department would subvert this statutory scheme if it did not use the first category in which there were sales; for example, by making a comparison with ''similar'' merchandise even though the respondent had sales of identical merchandise. Moreover, adopting the proposed methodology effectively would add an additional criterion to 771(16); namely, that merchandise in the category selected must be sold above cost in sufficient quantity. As the CIT has explained in upholding the Department's policy under prior law, ''[o]nce the model matches are established and the COP test is completed, Commerce is not required to reexamine all of the undifferentiated model data in order to make new matches and price comparisons on the basis of whatever subset of lower-ranked such or similar merchandise survives

the COP test.'' *Zenith* v. *United States,* 872 F. Supp. 992, 1000 (CIT 1994). *See also* Policy Bulletin 92/4, ''The Use of Constructed Value in COP Cases,'' for a detailed discussion of this issue.

One commentator recommended that for purposes of computing COP and CV, the Department should rely on the product categories that a respondent uses in its normal course of business. Several commentators opposed this recommendation, stating that costs are to be computed based on the same product categories established by the Department for model matching. The Department's practice is to calculate costs consistent with the model matching criteria it develops outset of an investigation or review, after having received the views of the parties. The product categories developed in such fashion generally account for significant differences in actual costs affecting price. The Department intends to continue this practice because it prevents any manipulation of the cost analysis through changes in internal product classifications.

Section 351.407

Section 351.407 contains special rules for the allocation of costs and the calculation of CV and COP in situations involving startup operations.

Allocation of Costs: Paragraph (b) provides that the Department will consider various factors associated with the production and sale of the subject merchandise and the foreign like product in order to ensure that the method used to allocate production costs reasonably reflects and accurately captures all of the producer's actual costs. Paragraph (b) specifically mentions two factors, production quantities and relative sales values, that the Department may take into account in judging whether common production costs (including costs incurred as part of a joint manufacturing process) have been allocated among products on an appropriate basis. As has been its practice in the past, however, the Department may weigh other significant qualitative and quantitative factors concerning the production of the merchandise in question to ensure that a producer has reported a representative measure of the materials, labor, overhead, and other costs associated with the subject merchandise and the foreign like product.

Startup Costs: Startup costs are addressed in paragraph (c). Under section 773(f)(1)(C)(ii) of the Act, the Department may make an adjustment for costs relating to startup operations only if the following two conditions are satisfied:

(1) A producer is using new production facilities or producing a new product that requires substantial additional investment, and

(2) production levels are limited by technical factors associated with the initial startup phase of commercial production.

For good reason, these conditions are somewhat generalized, because they must allow for any number of startup operation scenarios. The Department recognizes the fact-specific nature of the startup adjustment, and realizes that much of the guidance for implementing the adjustment will come from future case work. Nevertheless, the Department believes that the regulations offer an opportunity to furnish parties with additional clarification of those circumstances that qualify as startup operations and those that do not. To achieve this goal, while at the same time keeping the definition of startup clearly within the bounds intended by Congress, the Department has incorporated into the regulations concepts from the SAA, at 836–838, that help to define startup operations and explain the startup adjustment.

Definition of startup: Paragraph (c)(1) includes definitions for ''new production facilities'' and ''new products,'' as well as guidance on whether improvements to products or facilities and expansion of capacity qualify as startup operations. The Department received a number of comments concerning the definition of startup. For the most part, the commentators fell into two camps—those who believed that startup should be ''narrowly defined'' in the regulations, and those who rejected this approach. In either case, the commentators did not provide substantive definitions that differed in any significant way from those adopted by the Department. Rather, their thoughts on whether or not to craft the regulations ''narrowly'' related to issues of implementation and burden of proof, both of which are discussed separately below.

In addition to the comments described above, the Department received comments on two other issues regarding the startup definition. With respect to the first issue, one commentator argued that the term ''new product'' does not refer to ''improved'' products or to new-model-year versions of products, and recommended that the Department's regulations reflect this premise. According to the commentator, ''new products'' must have completely new designs or require the use of new facilities or ''substantial additional investment'' to existing facilities. Another commentator wrote to reject this position, stating that, while the SAA clearly intends to exclude from startup any incrementally improved products, it does not prohibit new-model-year versions from qualifying as ''new products'' where they satisfy the definition of a startup. The Department agrees with the latter commentator. There is no basis in the statute or SAA to specifically exclude new-model-year products or ''improved'' products where their production otherwise meets the startup criteria.

With respect to the second issue, two commentators recommended that the Department include an additional condition to the startup analysis. These commentators maintained that no startup adjustment should be allowed where, based on a comparison of prices and costs in the startup period, the Department finds that the respondent has adjusted its prices upward to reflect the higher startup costs. The Department has rejected this proposal, because neither the statute nor the legislative history provides for this approach.

Demonstrating entitlement to a startup adjustment: Although the statute does not provide any specific guidance regarding the burden of establishing entitlement to a startup adjustment, the SAA, at 838, makes clear that the burden is on the party seeking the adjustment:

> Specifically, companies must demonstrate that, for the period under investigation or review, production levels were limited by technical factors associated with the initial phase of commercial production and not by factors unrelated to startup, such as marketing difficulties or chronic production problems. In addition, to receive a startup adjustment, companies will be required to explain their production situation and identify those technical difficulties associated with startup that resulted in the underutilization of facilities.

Importantly, however, the SAA notes that the burden imposed for startup adjustments is consistent with the Department's approach to adjustments in general. Thus, in demonstrating to the Department that a startup adjustment is warranted, respondents will be held to the same legal and factual standards that apply to all other adjustments in an antidumping analysis.

The Department received a number of comments regarding this ''burden of proof'' issue. Although virtually all of the commentators recognized that the burden of establishing entitlement to an adjustment fell on the party making the claim (in all likelihood the respondent), there was significant disagreement as to

the evidentiary standard that the Department should apply in considering whether to grant a startup cost adjustment. Those commentators seeking to limit the availability of the startup adjustment claimed that in considering whether to grant an adjustment, the Department's regulations must hold respondents to a rigid evidentiary standard. They reasoned that because the startup provision constitutes an exception to the cost of production/constructed value section of the statute, the Department should grant an adjustment only in limited circumstances. This would ensure that, in the words of the SAA, at 835, the startup adjustment did not provide respondents with a ''license to dump.''

The Department believes that, contrary to the commentators claims, this statement from the SAA is not intended to place a higher-than-normal burden on parties. Instead, the statement merely advocates strict enforcement of the startup provision, and advises the Department to grant adjustments only in those circumstances where they are warranted.

The Department also received recommendations from two commentators that wished to reduce the burden of proof below that applicable to other adjustments. The first commentator suggested that the Department's regulations provide that once a respondent has made a *prima facie* case of entitlement to a startup adjustment, the Department would make the adjustment unless there was clear and convincing evidence that factors other than startup affected sales volumes. In addition, the commentator recommended that the regulations impose an early deadline, following the request for a startup adjustment by respondent, by which the Department must: (1) Decide precisely what additional information a respondent must supply to support a claimed startup adjustment, and (2) decide whether an adjustment is appropriate. The second commentator took a somewhat less radical (but still far-reaching) approach in recommending that the Department interpret the burden on respondents as a ''burden of production'' rather than a ''burden of proof.'' This commentator explained that the term ''burden of production'' meant that a respondent has the responsibility for cooperating in the proceeding and producing whatever evidence is available to support its claim. By contrast, according to the commentator, the ''burden of proof'' meant that the respondent had the ultimate burden of persuasion in convincing the Department of its entitlement to a startup adjustment.

The Department has not adopted these recommendations. Again, according to the SAA, the burden of proof undoubtedly rests with the party seeking a startup adjustment. Therefore, it is incumbent upon that party to (1) prove that the startup conditions of section 773(f)(1)(C)(ii) of the Act existed during the period of investigation or review, and (2) as with any antidumping adjustment, document that fact to the Department's satisfaction.

Duration of the startup period: Under section 773(f)(1)(C)(ii) of the Act, the startup phase ends at the time commercial production levels have been achieved. Commercial production levels themselves, however, represent a somewhat nebulous benchmark. Therefore, in gauging the end of the startup period, the statute instructs the Department to consider factors unrelated to startup operations that also may affect a respondent's production volumes. These factors include market demand, product seasonality, and business cycles. Section 773(f)(1)(C)(iii) of the Act further provides that the benchmark commercial production levels are to be characteristic of the merchandise, producer, or industry concerned.

It is clear from the statute that measurement of commercial production volumes (and, thus, determination of the end of the startup period) is dependent on a range of factors specific to the product or industry under consideration. This concept is also expressed in the SAA, at 837, which states:

> The Administration recognizes that the nature and timing of startup operations will vary from industry to industry and from product to product, and that any determination of the appropriate startup period involves a fact-intensive inquiry * * *. For this reason, the Administration intends that Commerce determine the duration of the startup period on a case-by-case basis.

However, while the duration of the startup period is to be evaluated based on the facts of each case, the SAA does provide guidance regarding the type of evidence that the Department will examine and the factors it should consider in making its determination. The SAA, at 836–37, instructs the Department to first examine the actual production experience for the merchandise in question in determining when a company reaches commercial production levels. In addition, the SAA states that the Department should consider other information, including ''historical data reflecting the same producer's or other producer's experiences in producing the same or similar products.'' The SAA makes clear, however, that the Department should ascribe little weight to a producer's projections of future production volumes or costs. Lastly, the SAA notes that the Department must consider those factors described in the statute that are unrelated to startup operations but that may affect production volumes. Again, these include product demand, seasonality, and business cycles. These factors are reflected in paragraphs (c)(2) and (c)(3). Furthermore, consistent with the SAA, paragraph (c)(4)(i) provides that the Department will determine the duration of the startup period on a case-by-case basis.

The Department received relatively few recommendations regarding the duration of the startup period. This perhaps reflected the commentators appreciation of the fact-intensive nature of the startup period determination. Most commentators that did provide recommendations generally urged the Department to incorporate the statutory language into the regulations. Certain commentators suggested that the regulations reflect the SAA stipulation that attainment of peak production levels will not be the standard for identifying the end of the startup period. This is consistent with paragraph (c)(2)(i).

One commentator argued that the startup period should be ''narrowly conscribed,'' but did not offer any direct suggestions as to what this meant or how it should be achieved. The Department believes, however, that the statute does not provide for a narrow interpretation of the startup period. Rather, the intent of the statute is to determine the duration of the startup period based on the specific facts of each case.

Method of adjusting for startup costs: Section 773(f)(1)(C)(iii) of the Act sets forth the basic methodology for making startup adjustments. According to this section, where the essential conditions of startup have been satisfied, the Department will adjust for startup operations by ''substituting the unit production costs incurred with respect to the merchandise at the end of the startup period for the unit production costs incurred during the startup period.'' Section 773(f)(1)(C)(iii) further provides that in situations where the startup period extends beyond the period of investigation or review, the Department will base any startup adjustment on ''the most recent cost of production data that it reasonably can obtain, analyze, and verify without

delaying the completion of the investigation or review.''

Given the variety of products and diverse industries investigated by the Department, the statutory instructions under section 773(f)(1)(C)(iii) of the Act provide a reasonably comprehensive framework for implementing the startup adjustment methodology. The Department believes that any attempt to further define the adjustment methodology runs the risk of limiting the Department's ability to consider the facts of each case in adjusting for startup costs.

Likewise, in those instances where the startup operations extend beyond the period of investigation or review, the regulations do not impose time limits on the acceptance of relevant cost of production data beyond those already set forth in the statute. Instead, the Department will evaluate its ability to obtain, analyze, and verify such data on a case-by-case basis. Moreover, the regulations do not limit the type of data that may be used to adjust production costs for extended startup periods. For example, where the startup operations involve a new manufacturing facility, the appropriate adjustment methodology may require deriving surrogate costs based on identical merchandise manufactured at a previously existing facility.

Costs included in the startup adjustment: As explained in the SAA, at 837, in adjusting production costs for startup operations, the Department ''will consider unit production costs to be items such as depreciation of equipment and plant, labor costs, insurance, rent and lease expenses, materials costs, and overhead.'' The SAA further notes that ''sales expenses, such as advertising costs, or other non-production costs, will not be considered startup costs because they are not directly tied to the manufacturing of the product.'' The Department believes that these examples from the SAA provide helpful guidelines in determining which types of costs qualify as production costs for which a startup adjustment may be allowed. Therefore, they are reflected in paragraph (c)(4)(iii).

Despite the clear language of the SAA, some commentators have suggested that adjustments for startup operations should take into account only variable production costs, excluding altogether any fixed production costs that may have been incurred during the startup phase. This proposal is inconsistent with the SAA, which does not limit qualified startup costs to variable costs only. Indeed, several of the eligible cost categories identified in the SAA—depreciation, insurance, rent and lease expenses, and (in some instances) overhead—are typically regarded by the Department as fixed costs. Moreover, the fact that production levels are limited during the startup period means that, in most instances, the per unit fixed costs will be affected to a greater extent by startup operations than will the per unit variable costs during the same period. Thus, the Department has rejected the proposal that the startup adjustment be limited to variable production costs only.

Amortization of startup costs: In general, the adjustment for startup operations calls for the replacement of high, per-unit production costs incurred during startup operations with lower costs from a period subsequent to the startup phase. Under this methodology, however, a portion of the actual startup costs remains unaccounted for as a result of the startup adjustment. Although the statute is silent on how to treat this difference between actual costs and surrogate costs calculated for startup, the SAA, at 837, states that such deferred costs are to be amortized over a reasonable period of time. The SAA further provides that the amortization period should begin subsequent to the startup phase and extend over the life of the startup product or machinery. Paragraph (c)(4)(ii) reflects the language in the SAA by providing that where startup operations relate to a new product, the Department, in most cases, will look to documentation regarding the estimated life of that product to determine the appropriate amortization period for excess startup costs. Where startup operations relate to a new production facility, the Department normally will determine the proper amortization period based on reasonable estimates of the useful lives of new production equipment.

Several commentators suggested that the amortization period for deferred costs must be ''relatively short and immediate'' in all cases. In addition, one of the commentators maintained that the amortization period must commence at the beginning of the startup phase, while another commentator claimed that the period for amortization could not extend beyond the period of investigation or review. The Department disagrees with the suggestion that the startup cost amortization period must be short and immediate in all cases, because there is no support for this suggestion in either the statute or the SAA. Instead, the length of the amortization period depends on the specific facts of each case and may vary greatly depending on a number of factors, including a respondent's past production experience and commercial practices within the industry under investigation or review.

The Department also has not adopted a proposal that (1) the startup amortization period must commence at the beginning of the startup phase, and (2) the amortization period may not exceed the period of investigation or review. Regarding the first point, the SAA states that the amortization period is to begin subsequent to the startup phase. With respect to the second point, the SAA states that the amortization period for deferred startup costs should reflect the life of the product or machinery, as appropriate. The SAA gives no indication that the amortization period must not extend beyond the period of investigation or review. In fact, it is entirely conceivable that the life cycle of a particular product or piece of machinery (and, thus, the amortization period for deferred startup costs) could span several segments of a single proceeding.

Recognition of previously incurred startup costs: Two commentators suggested that the Department adopt regulations to discourage selective use of the startup adjustment, as well as to provide for more equitable treatment of startup costs in general. To achieve these objectives, the commentators recommended that the Department disallow startup claims where a respondent does not also amortize startup costs for other products covered by an order. As one of the commentators explained in relating startup costs to other types of non-recurring costs:

> [T]he treatment of any non-recurring costs should provide for an equitable approach that adds non-recurring costs to later sales as well as deducting them from current sales. Thus, if certain types of non-recurring costs incurred during the investigation period are to be reduced and not fully attributed to that period, then similar non-recurring costs from before the period should be allocated in a similar manner and added to the costs during the period.

Under the commentator's proposed accounting methodology, the Department presumably would require a respondent seeking an adjustment for startup operations to recognize an amortized portion of similar startup costs previously incurred on all other products and facilities that had undergone startup prior to the period of investigation or review. Thus, as a condition for receiving a startup adjustment for one product, a respondent would have to show that it had accounted in a like manner for the startup costs incurred with respect to all other products sold during the period.

The Department does not find the above accounting requirement to be an

appropriate condition of startup. There is no such requirement in either the statute or the SAA. Moreover, the Department believes that requiring a respondent to account for all past startup costs as a precondition to receiving an adjustment for startup costs incurred during the period of investigation or review would discourage respondents from seeking a startup adjustment in those circumstances where an adjustment is appropriate. Under such a requirement, the burden placed on respondents would be too great, requiring them in many instances to look to detailed accounting records of old product lines and facilities that, for practical business reasons, may long since have been discarded.

Nonrecurring Costs: New section 773(f)(1)(B) of the Act states that the Department will adjust COP and CV for those nonrecurring costs that benefit current or future production periods. The SAA, at 835, notes that the provisions of section 773(f)(1)(B) of the Act are consistent with the Department's past practice, which associated expenditures with production of the merchandise during the period or periods benefitted by those expenditures.

Two commentators suggested that the Department establish regulations clarifying that nonrecurring costs treated as non-operating or extraordinary expenses by a company should be included in the cost of production only if those costs benefit current or future production. The commentators suggested that the Department's regulations state that to the extent such costs do benefit current or future production, they should be included in COP and CV by allocating the costs over the production they benefit. The commentators added that, in some instances, this may entail the amortization of the costs over periods longer than the period of investigation or review. Another commentator stated that while it did not object to the proposal for regulations clarifying the treatment of nonrecurring costs, the Department also should require respondents to provide information and data for nonrecurring costs incurred before the period of investigation or review. This commentator noted that the Department could then include in COP and CV the previously incurred costs if such costs benefitted production during the period of investigation or review. Finally, another commentator urged the Department to reject the proposed regulations for treatment of nonrecurring costs. The commentator stated that the Department should continue to examine nonrecurring costs on a case-by-case basis.

As the Department has learned in past cases, it is not always easy to determine whether (and to what extent) a particular expenditure benefits current or future production periods. In virtually all instances, the Department must analyze the expenditure in light of any number of specific factors in the case. For example, the SAA, at 835, cites pre-production research and development (R&D) costs as an example of nonrecurring costs that could benefit current or future periods. However, there is no guarantee that such costs, if incurred to develop a new product or production process, would hold any future benefit to a company. To the contrary, after many months of costly research, a manufacturer could find its new product technologically useless due to the efforts of its competitors. In that case, the amounts incurred for R&D would not benefit the producer in terms of future product sales. Under these circumstances, the R&D expenditures must be recognized as an expense in the year incurred rather than amortized to some future periods.

Because of the fact-specific nature of determinations involving nonrecurring costs, the Department has not drafted any regulations to implement section 773(f)(1)(B) of the Act. Examples of nonrecurring costs in the regulations would not prove helpful to parties, because there are many unique categories of expenditures to consider in a variety of industries. Moreover, depending on the circumstances, a particular expenditure in one case could provide the producer a future benefit, whereas the identical expenditure made by another producer in a different case may provide no benefit at all. Thus, including specific examples of nonrecurring costs in the regulations might create confusion for parties.

The Department believes that a respondent's accounting treatment of a particular expenditure is one factor to consider in determining how that expenditure should be treated for purposes of computing COP and CV. It is by no means dispositive, however. With regard to the suggestion that the Department account for nonrecurring costs incurred in prior periods, the Department believes that it is unnecessary for the Department to make this a regulatory requirement. Instead, the Department will examine on a case-by-case basis whether to account for such previously-incurred costs where they benefit production during the period of investigation or review.

Major Input Rule: Section 773(f)(3) of the Act (which replaces old section 773(e)(3)) contains the ''major input rule.'' Under this rule, the Department may examine transactions between affiliated producers and suppliers for purchases of major inputs. Section 773(f)(3) of the Act (formerly section 773(e)(3)) provides that where the Department has reasonable grounds to believe or suspect that an affiliated supplier has made below-cost sales of a major production input, the Department may base the value of the input on the affiliated supplier's production costs. This provision applies both to cost of production and constructed value.

A number of commentators suggested that the Department clarify through regulation the following standards for initiating an input dumping investigation: (1) That no supplier cost information may be requested by the Department without ''reasonable grounds'' to suspect input dumping; (2) that no carryover of ''reasonable grounds'' exists between segments of a proceeding (*i.e.*, findings of below-cost inputs in one segment does not provide grounds for automatic initiation in the next); (3) the time limits within which the Department must make a determination as to which affiliated party inputs are ''major''; and (4) that no supplier cost information may be requested if the supplier's transfer prices are demonstrated to be at arm's length. Other commentators suggested that the Department define a ''major input'' as any material, labor, or overhead input that represents five percent or more of the total cost of materials for the merchandise. In addition, these commentators urged the Department to consider on a case-by-case basis the use of transfer prices or costs in valuing major inputs. The commentators stressed that this determination must be made separately for each input rather than in the aggregate for all affiliated party inputs.

The determination of whether an affiliated party input constitutes a ''major input'' in a particular case depends on the input and the product under investigation. It would be inappropriate for the Department to attempt to establish an all-encompassing threshold for defining the term ''major input,'' because such a definition likely would prove to be too broad in some circumstances and too narrow in others. However, the Department does agree that it should attempt to identify, as early as possible in a proceeding, a standard for identifying major inputs that is appropriate to the product and industry in question. In addition, as the Department gains more experience in determining whether parties are ''affiliated'' under the new law, the

Department will establish through practice the evidentiary threshold for requesting transfer prices and cost data from affiliated suppliers that furnish major inputs (see section 351.102 and the accompanying explanation for further discussion regarding affiliated persons).

Calculation of Costs: One commentator stated that it is unclear from the SAA when costs are ''rapidly changing'' such that it would be appropriate to use shorter time periods to calculate costs. The commentator suggested that the Department's regulations provide illustrative examples that would allow interested parties to determine when costs are ''rapidly changing.'' According to the commentator, the Department's regulations also should describe the shorter periods that would be used to compute costs in such situations.

Another commentator recommended that the Department clarify in its regulations the circumstances in which it will calculate costs based on amounts incurred by both the exporter and producer. The commentator urged the Department to refrain from attempting to correct ''upstream dumping,'' and instead limit its analysis of both the exporter's and the producer's costs to those situations in which the relationship between the two throws into question the legitimacy of their transactions.

The Department believes that determinations involving both of these issues are fact-specific in nature, and that while regulatory examples might give some guidance, they also might be construed as imposing limits on the circumstances in which the Department will address these issues. As a result, the Department has not included any provisions in the regulations specifically addressing these issues. The Department intends to develop its practice with respect to these issues over time.

With respect to the use of a respondent's normal records in computing COP and CV, two commentators suggested that the regulations incorporate the concepts outlined in the SAA, at 834–35, including the stipulation that the Department will use the records of the exporter or producer of the merchandise, provided that such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting or producing country and reasonably reflect the costs associated with the production and sale of the merchandise. The commentators also recommended additional regulations describing the type of evidence the Department will consider in determining whether respondent's costs are ''reasonably reflected,'' and stating that the Department will re-allocate costs that would inappropriately reduce COP and CV. In response to these suggestions, one commentator argued that the SAA does not provide the Department with the authority to adjust a respondent's books and records in order to compute a ''more accurate'' per-unit cost. Rather, the Department is to use company records as the basis for reporting costs, so long as those records are kept in accordance with GAAP and reasonably reflect costs incurred.

Section 773(f) of the Act explicitly provides for the use of a company's books and record in the calculation of costs, provided that such records are kept in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. As a result, the Department has not repeated this directive in the regulations. The determination of whether a respondent's costs are ''reasonably reflected'' will be based on a case- and fact-specific analysis. Where a respondent's records do not reasonably reflect the costs associated with the production and sale of the merchandise, the Department may adjust the figures in a respondent's books and records in order to compute a more accurate per-unit cost.

With respect to the Department's COP questionnaire, one commentator suggested that the questionnaire be revised to elicit sufficient information that traces the cost of production from the per unit cost of the subject merchandise back to a company's audited financial statements. The Department must balance its ability to conduct COP investigations with reporting burdens placed on respondents, and the Department this year revised its questionnaire with this balance in mind. Notably, the questionnaire does require respondents to provide reconciliation of unit costs. If, however, the information requirements of the Department's standard antidumping questionnaire should prove inadequate in a particular case, the Department will modify its information requirements.

Section 351.408

The current statutory provision addressing the calculation of normal value in antidumping proceedings involving nonmarket economies (''NMEs'') was enacted as part of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, section 1316(a)). The Department never issued regulations implementing the 1988 amendment. Instead, the Department developed its NME methodology through administrative practice. Now, with the benefit of seven years' experience in administering the NME provision, the Department believes it is appropriate to codify the rules the Department intends to apply. Certain of these rules, contained in § 351.408, restate the practice the Department has developed over the past seven years, while other rules constitute changes that the Department believes to be improvements over current practice.

We have decided not to codify the existing MOI (market oriented industry) test at this time. Some commentators have argued that it does not make sense to use an NME producer's prices or costs in an environment in which institutions important to the functioning of markets such as private ownership and private capital markets do not exist. In their view, an NME producer's prices or costs can only have economic meaning where these very fundamental types of institutions are in place. Other commentators see the current MOI test as overlooking the important role that an open trading system, with relatively few quantitative restraints, can play in ensuring that domestic prices and costs are market-determined, and in reducing the effects of remaining instances of state presence or control. In light of these concerns, we are seeking comments on whether the current MOI test succeeds in identifying situations where it would be appropriate to use domestic prices or cost in an NME as the basis for normal value and, if not, what form the test should take.

Surrogate Selection: Section 773(c)(1) of the Act contains the usual methodology for calculating normal value in proceedings involving NMEs, the so-called ''factors of production'' methodology. Section 773(c)(2) provides an alternative to the preferred methodology, allowing the Department in narrowly drawn circumstances to use the export prices of certain market economies as normal value. In either case, the Department is required to select a ''surrogate'' market economy country or countries to use in its calculations.

Section 773(c)(4) of the Act describes the criteria for surrogate selection where the factors of production methodology is used: surrogates should be market economies at a level of economic development comparable to that of the NME and significant producers of comparable merchandise. Where the export price alternative to the factors of production methodology is being used,

prices are to be taken from market economy countries at levels of economic development comparable to that of the NME. This alternative, as to which further comment is appropriate, has not been used in any antidumping proceeding since the 1988 amendment was enacted, but if it is used in future cases, the economic comparability criterion, discussed in more detail below, would be applied in the same way it is applied when the factors of production methodology is used.

In selecting surrogate countries for investigations and reviews that were conducted under the 1988 amendment and that involved the valuation of NME producers' factors of production, the Department has accorded differing weights to the economic comparability and significant producer criteria. Typically, the Department has placed greater emphasis on the former. However, the regulations do not codify this weighing scheme, because, depending on the specific facts of a case, this scheme can result in a poor surrogate selection. For example, where the production process for the merchandise being investigated relies heavily on non-traded inputs (*i.e.*, inputs that must be acquired locally, such as electricity), it is reasonable to expect that significant production of that merchandise will occur only in countries where the input is relatively inexpensive. However, these countries may not be economically comparable to the NME. For example, the Department has not observed any correlation between electricity prices and levels of economic development. The Department believes that in adopting the significant producer criterion, Congress intended for the Department to select a surrogate country (or countries) where input prices and availability allow significant production to occur. Therefore, where production of the subject merchandise relies heavily on an input that is more readily available, or available at lower cost, in certain countries, it is appropriate to place greater weight on the ''significant producer'' criterion.

On the other hand, where the most important inputs are easily traded and can be obtained from multiple sources in the surrogate country, the significant producer criterion may be less important. This is because in these situations there is no direct correspondence between significant levels of production and input price or availability. Instead, wage rates and other considerations such as investment restrictions or access to important markets will be more important determinants of where production will occur. With the exception of wage rates, which are discussed further below, these other considerations will not usually have as direct an impact on the input prices that would be used to value the NME producers' factors of production.

For these reasons, the Department does not believe it is appropriate to create an a priori weighing scheme to be applied to the criteria for selecting surrogates. Instead, in each proceeding the Department will identify those countries that are economically comparable to the NME and those countries that are significant producers of comparable merchandise. If there is a country that meets both criteria, that country will be selected as the surrogate. If there is more than one country that meets both criteria, the Department will evaluate the specific facts developed in the course of the proceeding to determine whether to select the more economically comparable country or the country whose producers employ production technologies similar to those of the NME producers. If no country meets both the economic comparability and the significant producer criteria, the Department will examine the facts of the case and comments submitted by the parties to determine which criterion should receive the greatest weight.

Economic Comparability: Regarding the economic comparability criterion, the Department's practice of relying most heavily on comparability of per capita GDP to select economically comparable countries is codified in paragraph (b). Certain other indicia of economic comparability have been considered in the past, such as growth rates and the distribution of labor between the manufacturing, agricultural and service sectors. However, primary weight has been placed on per capita GDP.

Factor Valuation: Once a surrogate country (or countries) has been selected, the next step is to assign values to the actual factors or inputs used by the NME producer. In choosing these values, the Department has developed practices that emphasize ''accuracy, fairness, and predictability.'' Oscillating Fans and Ceiling Fans from the People's Republic of China, 56 FR 55271, 55275 (October 25, 1991), cited with approval in *Lasko Metal Products, Inc.* v. *United States*, 43 F.3d 1442 (Fed. Cir. 1994). The Department continues to believe that these goals should guide the factor valuation process, and, consequently, is proposing rules to further this.

Two important practices have arisen to promote the accuracy, fairness and predictability of the factor valuation process. First, the Department has developed a preference for using publicly available, published information (''PAPI'') to derive factor prices. See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-weld Pipe Fittings from the People's Republic of China, 57 FR 21058, 21062 (May 18, 1992) (Butt-Weld Pipe Fittings). This practice, along with the practice of attempting to use data derived from a single surrogate country, clearly enhances the transparency and predictability of our determinations. However, based on experience, the Department has concluded that a preference for PAPI also can result in decreased accuracy. This is particularly true where surrogate country trade statistics are used and the import/export categories used to derive unit values are broad.

In order to strike a better balance between the goals of accuracy and transparency, paragraph (c)(1) drops the preference for published information, limiting the preference to publicly available information. The public availability standard is aimed at promoting transparency, while the deletion of the published information standard enables the Department to achieve greater accuracy when information on the specific factor can be derived outside of published sources. Paragraph (c)(1) is not meant to preclude the Department from using published information. Instead, it is intended to reflect the Department's preference for input specific data over the aggregated data that frequently appear in published statistics.

The Department continues to take the position that it is not required to use ''perfectly conforming information'' for factor valuations. Ceiling Fans from the People's Republic of China: Notice of Court Decision; Exclusion from the Application of the Antidumping Duty Order, in Part; and Amended Final determination and Order, 59 F.R. 9956 (March 2, 1994). However, the Department is exploring means of enhancing the accuracy of the data used to value the NME producers' raw materials. To that end, the Department intends to use the flexibility accorded to the agency by section 773(c) and reflected in court decisions to date regarding our administration of the 1988 amendment.

The second important practice that has developed involves situations where an NME producer uses inputs which are: (1) Imported from a market economy producer, and (2) paid for in a market economy currency. In these instances, the Department has used the price actually paid by the NME

producer in lieu of a price in the surrogate country. This practice has been upheld by the Federal Circuit in *Lasko*. Paragraph(c)(1) clarifies the Department's authority to continue this practice.

The regulation also clarifies two aspects of this practice. First, in situations where a portion of the NME producer's input is sourced from a market economy source (and paid for in a market economy currency) and the remainder is sourced from producers within the NME, paragraph (c)(1) makes clear that the price paid to the market economy supplier should normally be used to value the input, not the price derived from a surrogate. This reflects the Department's position that accuracy is enhanced when the NME producer's actual costs can be used. However, where the amount purchased from a market economy supplier is insignificant, that price may be disregarded.

Second, in using prices of inputs imported from market economy suppliers, the Department in the past has stated that the imported input must be paid for in a convertible currency. The Department believes that this is an overly rigorous requirement. The extent to which currencies may be converted varies even among market economy currencies. Yet, the Department uses the exchange rates for less-than-fully convertible currencies in our dumping proceedings involving those countries. Paragraph (c)(1) recognizes that full convertibility of the currency used to pay for the imported input is not necessary so long as the market economy producer is paid in a market economy currency.

Valuation in Single Country: Paragraph (c)(2) codifies the Department's general preference for valuing all factors, except labor (as discussed below), in a single surrogate country. As noted above, to enhance the predictability of proceedings involving nonmarket economies, the Department has followed the practice of attempting to value the NME producers' factors of production in a single country, even though sections 773(c)(1) and (c)(4) clearly permit values to be developed from more than one country.

Where the Department is able to develop industry specific data on manufacturing overhead, general expenses, and profit, it is particularly appropriate to remain within a single country for those values. Normally, it is inappropriate to combine the manufacturing overhead rate from producers in one surrogate with the general expenses of producers in another surrogate, and the profit of producers in yet another surrogate. Therefore, particularly for manufacturing overhead, general expenses and profit, the Department prefers to use a single surrogate.

With regard to other inputs, however, the preference for using a single country addresses, at least in part, a different concern. It is meant to prevent parties from ''margin shopping''; i.e., to prevent parties from arguing that the Department combine input prices from different surrogates to achieve the highest or lowest valuations of those inputs. While it is important to discourage margin shopping, the Department also has encountered situations in which the accuracy of available information regarding prices for particular factors in the surrogate country is highly questionable. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China, 59 FR 55625, 55630 (November 8, 1994). Clearly, in these situations it is appropriate to reject the questionable values and use data from a second country. Alternatively, where the factor is traded internationally, the goals of accuracy and fairness may be better served by using the prices observed in international markets to represent the price at which producers in the surrogate country could obtain the input.

Labor: Paragraph (c)(3) proposes a new methodology with respect to the valuation of labor. Practitioners and academicians commenting on the application of the antidumping law to NMEs (and, in particular, the use of economically comparable countries as surrogates) have tended to equate comparable per capita GDPs with comparable wages. The Department has examined this proposition based on recent data of the type the Department uses in its proceedings, and has concluded that while per capita GDP and wages are positively correlated, there is great variation in the wage rates of the market economy countries that the Department typically treats as being economically comparable. As a practical matter, this means that the result of an NME case can vary widely depending on which of the economically comparable countries is selected as the surrogate.

Because of the variability of wage rates in countries with similar per capita GDPs, paragraph (c)(3) directs the Department to use what is essentially an average of the wage rates in market economy countries viewed as being economically comparable to the NME. The statute permits this approach because section 773(c)(4) refers to using prices or costs in ''one or more market economy countries.'' Moreover, use of this average wage rate will contribute to both the fairness and the predictability of NME proceedings. By avoiding the variability in results depending on which economically comparable country happens to be selected as the surrogate, the results are much fairer to all parties. To enhance predictability, the average wage to be applied in any NME proceeding will be calculated by the Department each year, based on the most recently available data, and will be available to any interested party. This method of computing the wage rate should reduce the workload on the Department and the parties, because it eliminates the need to develop specific wage rate information for each case.

Specifically, the Department will calculate the wage rate to be applied by using an ordinary least squares regression relating the wage rates and per capita GDP of approximately 45 market economy countries. The data used and the results of the regression will be available from the Department upon request.

Manufacturing Overhead, General Expenses, and Profit: Paragraph (c)(4) deals with the valuation of manufacturing overhead, general expenses, and profit. These elements tend to be significant components of the constructed normal value of NME exports, and, hence, it is particularly important to have accurate values for them. However, the Department's experience in this regard has been less than satisfactory. Frequently, under prior law, the Department could not find surrogate values for these elements, thus forcing the Department to rely upon the statutory minima of 10 and 8 percent for general expenses and profit, respectively. The amendments to section 773(e)(2)(A) have eliminated this as an option. Moreover, even in cases in which PAPI was available, it was virtually always highly aggregated and frequently it was not clear what types of expenses were included in the amounts.

Given the importance of manufacturing overhead, general expenses and profit in the calculation of normal value, the Department believes it is important to seek information that is as accurate as possible. To this end, paragraph (c)(4) expresses a preference for using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country for valuing manufacturing overhead, general expenses and profit. Because the Department expects that these elements will vary widely across industries, we

will attempt to obtain data that is as specific as possible to the subject merchandise.

In past cases, the Department has relied on U.S. embassies in surrogate countries to obtain data on manufacturing overhead, general expenses, and profit (as well as values for other inputs) with disappointing results (see *Butt-Weld Pipe Fittings,* supra). The Department intends to redouble its efforts to work with embassies in gathering this data, while at the same time seeking alternative means of developing this information. However, even if the Department is able to develop industry-specific information, it would be overly optimistic to believe that the Department will have detailed information on the exact expenses that have gone into the values for manufacturing overhead and general expenses. As far as overhead is concerned, this can raise problems of double counting. For example, if we do not know whether water or electricity is included in the surrogate producers' overhead, we will not know whether to value those factors separately, in addition to the overhead. The Department continues to believe that these situations must be approached on a case-by-case basis using facts available, in accordance with section 773(c)(1).

Assignment of Antidumping Margins: The Department has addressed the rates to be applied in NME cases in connection with the definition of ''rates'' contained in § 351.102.

Section 351.409

Section 351.409 sets forth the guidelines for making adjustments to normal value for differences in quantities, and is based on section 353.55 of the existing regulations. The statutory authorization for quantity adjustments is found in section 773(a)(6)(C)(i) of the Act. The proposed rule is substantially the same as the existing rule, with three exceptions discussed below.

Paragraph (b) is changed from existing section 353.55(b). The existing paragraph provides that the Department will deduct a quantity discount from the selling price of merchandise used in the antidumping calculation, regardless of whether the quantity discount was actually applied, only in two circumstances. To qualify for the adjustment, a respondent either had to have granted discounts of a similar magnitude on 20 percent of the foreign market sales, or the respondent had to demonstrate that savings were specifically attributable to production of different quantities. One commentator suggested that the Department should have more flexibility to grant the adjustment, because there may be other ways to demonstrate that different price levels exist for different quantities. The Department agrees that this may be so, and, accordingly, paragraph (b) provides that an adjustment for differences in quantities ''normally'' will be made only if the ''20 percent'' or ''production savings'' rules, noted above, are satisfied.

The same commentator also suggested that the absence of a published price list should not be controlling with respect to the allowance of an adjustment. While the Department does not necessarily agree that the absence of a price list is controlling under existing § 353.55, paragraph (d) clarifies that the existence or absence of a price list is not controlling. In addition, the Department has clarified that where a price list does exist, the Department, in determining whether or not to grant an adjustment, will give weight to the price list only to the extent that the producer or exporter in question has adhered to the price list.

Paragraph (e) is new, and deals with the relationship between adjustments for differences in quantities and adjustments for differences in levels of trade. Under the new statute and these proposed rules, the Department may grant claims for level of trade adjustments more frequently than it did in the past. In many instances, however, there is likely to be a correlation between the level of trade at which a sale occurs and the volume sold. Therefore, there is a real possibility that in adjusting for differences in level of trade, the Department also will be adjusting, in whole or in part, for differences in quantities. In order to conform to the prohibition in § 351.401(b) against the double-counting of adjustments, paragraph (e) provides that where the Department makes a level of trade adjustment, the Department will not make an adjustment for differences in quantities unless the effect on price comparability of quantity differences can be isolated from the effect of the level of trade difference.

Section 351.410

Section 351.410 clarifies aspects of the Department's practice with respect to adjustments for differences in circumstances of sale under section 773(a)(6)(C)(iii) of the Act and the SAA, at 828. In general, the Department's practice with respect to adjustments for direct selling expenses and assumptions of expenses remains unchanged from prior practice. However, paragraph (a) confirms that the expenses for which the Department will make a circumstance of sale adjustment include, in constructed export price situations, direct expenses and ''assumptions'' incurred in the foreign market on sales of the subject merchandise, that are not deducted under section 772(d) of the Act. The reference to a deduction for other selling expenses relates to the commission offset contained in paragraph (e), discussed below.

One commentator suggested that section 351.410 be drafted in such a way as to essentially function as a catch-all provision to achieve ''fairness.'' While section 773(a) of the Act and Article 2.4 of the Antidumping Agreement both require that a fair comparison be made, both provisions specify in detail the methods by which this requirement is satisfied. Therefore, the Department has not adopted this suggestion.

Paragraph (b) defines ''direct selling expenses.'' The provision broadly defines such expenses in the same way that they are defined in the statute for purposes of the deduction from constructed export price under section 772(d)(1)(B) of the Act. In addition, paragraph (b) provides a non-exhaustive list of expenses that frequently qualify as direct selling expenses. In this regard, this list includes commissions, a type of expense which often was treated as a direct selling expense under prior Department practice. In section 772(d)(1) of the Act, commissions are listed separately from direct selling expenses. This might suggest that, for purposes of adjustments to normal value, commissions should not be treated as direct selling expenses. However, the SAA, at 828, indicates that Congress intended that, with the exception of the so-called ''ESP offset,'' the Department's practice regarding circumstance of sale adjustments would remain unchanged. Accordingly, for purposes of adjustments to normal value, the Department has included commissions in the list of commonly encountered direct selling expenses.

Some commentators suggested that the Department should recognize expenses as direct in the home or third country market when they are reported in accordance with business records normally kept by the firm based on the GAAP of the appropriate country. The Department has not adopted this suggestion. As noted above, a direct selling expense must result from, and bear a direct relationship to, the particular sale in question. The fact that, for example, salespersons' salaries are reported to the Department in a manner consistent with foreign GAAP and the

particular firm's normal business records does not transform what is unquestionably a fixed expense into an expense that ''results from'' a sale.

Other commentators suggested that direct selling expenses should be defined as expenses incurred after a sale. The Department has not adopted this suggestion. ''After'' and ''results from'' do not necessarily mean the same thing. While direct selling expenses typically are ''post-sale'' expenses, the Department has chosen to adhere to the language of the statute and the SAA.

Assumed expenses, which are treated like direct expenses, are defined in paragraph (c). Although such expenses were not previously identified as a separate category of expenses, it has long been the Department's policy to treat such expenses in the same manner as direct expenses.

Paragraph (d) is largely unchanged from prior regulations, and provides that the normal basis for circumstance of sale adjustments will be the amount of the expense. However, if appropriate, the Department may rely on differences in value to make the adjustment.

Paragraph (e), based on existing § 353.56(b)(1), continues the special rule to be applied when commissions are deducted in one market, but there are no commissions in the other market. Under the special rule, other selling expenses may be deducted from the price in the market without commissions up to the amount of the commission.

The Department also received several suggestions relating to the treatment of particular types of adjustments, such as discounts and rebates and adjustments for differences in credit terms. Discounts and rebates are dealt with in § 351.401(c). Without commenting on the merits of the particular suggestions with regard to selling expenses, the Department has declined to promulgate regulations on these particular topics, because they go beyond the level of methodological detail that the Department is attempting to achieve in these regulations.

Section 351.411

Section 351.411 establishes the provisions for making adjustments for differences in physical characteristics. As under current practice, the Department is not authorized to make adjustments for physical characteristics when products are considered to be identical.

Section 351.412

Section 351.412 deals with levels of trade, adjustments for differences in levels of trade, and the CEP offset. Paragraph (b) establishes how the Department will identify levels of trade in calculating export price, CEP, and normal value. Paragraph (b)(1) clarifies that, for export price and normal value, the level of trade will be based on the price of the sale before any adjustment is made. For constructed export price, the level of trade will be based on the price after adjustments are made under § 772(d) of the Act, but prior to any other adjustment. The purpose of this provision is to establish the level of trade of the constructed export price sale at the level at which the sale would have been made, had it been an export price sale.

With respect to the identification of levels of trade, some commentators argued that, consistent with past practice, the Department should base level of trade on the starting price for both export price (''EP'') and CEP sales. In support of this argument, these commentators cite the portion of the SAA (discussed above) that states that the introduction of the new terms ''EP'' and ''CEP'' was not intended to change prior Department practice. In addition, these commentators argued that the deduction of U.S. expenses and profit does not change the level of trade of the CEP.

The Department believes (as did other commentators) that this position is not supported by the SAA, and that it is neither reasonable nor logical. If the starting price is used for all U.S. sales, the Department's ability to make meaningful comparisons at the same level of trade (or appropriate adjustments for differences in levels of trade) would be severely undermined in cases involving CEP sales. As noted by other commentators, using the starting price to determine the level of trade of both types of U.S. sales would result in a finding of different levels of trade for an EP sale and a CEP sale adjusted to a price that reflected the same selling functions. Accordingly, the regulations specify that the level of trade analyzed for EP sales is that of the starting price, and for CEP sales it is the constructed level of trade of the price after the deduction of U.S. selling expenses and profit.

Section 351.412(c)(1) explains the general rule that the Department will make an adjustment for differences in levels of trade when it (i) calculates normal value based on sales at a level of trade different from that of the export price or constructed export price, and (ii) determines that the difference in level of trade has an effect on price comparability. We are interested in comments on how these rules can provide further guidance on this adjustment. We also will take account in the final rules the knowledge we expect to gain in administrative proceedings under the new law.

Certain commentators argued that there should be a regulatory presumption that the level of trade of the EP or CEP sale is the least remote level. Under these circumstances, they argue, a level of trade adjustment could never increase normal value. Therefore, the Department would only be required to analyze respondents' claims for level of trade adjustments. In the absence of a claim for an adjustment, the level of trade of the U.S. sale and normal value would be considered the same.

We disagree that the EP or CEP necessarily will be the least remote level of trade. Therefore, the regulations specify that the Department will in all instances analyze the level of trade of the sales in the United States and the comparison market, and, where appropriate, will increase or decrease normal value to effect a fair comparison.

Paragraph (c)(2) sets forth the rules for determining whether there are different levels of trade. This determination will be based primarily on the selling functions performed at each of the allegedly different levels. As set forth in the SAA, at 830, overlap between functions is not necessarily determinative of whether two levels of trade are distinct. Paragraph (c)(2) makes clear that sales at two allegedly different levels will be considered to have been made at the same level where the selling functions at the two levels are substantially the same.

Several commentators argued that the existence of a level of trade must be established by criteria independent of seller functions. This argument holds that only after establishing the existence of discrete levels of trade should the Department consider differences in selling functions and the pattern of price differences. Furthermore, they contend, levels of trade are properly identified by the classification of the seller's customers in the chain of distribution. Specifically, to be considered at different levels of trade, two sellers must sell to different customer categories in a chain of distribution (e.g., producer, distributor, retailer, consumer). For example, a producer and distributor both selling to end users would be classified at the same level of trade.

Other commentators, on the other hand, stated that there is no mention of an additional test or criterion in either the Act or the SAA. These commentators also note that both the Act and the SAA stress activities of the seller and do not mention activities of the customer as a factor in the level of

trade analysis. Furthermore, according to these commentators, it is quite common, even usual, for firms operating at different levels of trade to sell to the same customer categories and sometimes to the same customers. For example, producers sell to large retailers as well as to distributors that in turn sell to smaller retailers. However, the fact that they both sell to retailers does not justify classifying producers and distributors as being at the same level of trade. Each sells a different mix of product and service.

The Department agrees that an additional test or criterion for level of trade is not required by the AD Agreement or the statute, nor is one justified. Although the language of section 773(a)(7)(A) of the Act might be interpreted to mean that the recognition of a level of trade is dependent on factors in addition to seller functions, the Department interprets the reference to level of trade as referring to a respondent's claimed or alleged level of trade. The only test identified in the statute for the legitimacy of the claimed levels of trade is the activity of the seller. The suggestion that customer classifications define levels of trade does not comport with that test and, furthermore, the Department believes that the effect of adopting such a criterion would be to curtail severely the possibility of adjusting for significant differences in seller functions, either with a level of trade adjustment or the CEP offset. Nevertheless, the Department does recognize that prices within a single level of trade, defined by seller function, can be affected by the class of customer, and the Department will make every effort to compare sales at the same level of trade and to the same class of customer.

Paragraph (c)(2) defines level of trade solely on the basis of seller functions. However, small differences in the functions of the seller will not alter the level of trade. The latter point is important, because certain commentators argued that the difference in just one selling function should be sufficient to justify a difference in level of trade. While it is conceivable that the Department may find in a particular case that some single function is so significant as to change the level of trade, this would be relatively rare. Furthermore, the adoption of the suggested standard would result in the submission, and possibly the grant, of unreasonable claims for level of trade adjustments.

Paragraph (c)(3) reflects the requirements of the statute for identifying effects on price comparability. One commentator recommended requiring that at least 90 percent of the sales of the foreign like product reflect differences in price at different levels of trade to qualify for an adjustment. The regulations do not include a specific test for a pattern of consistent price differences, because, at this time, the Department has no experience in applying this standard.

Under paragraph (c)(4), the amount of any adjustment will be measured by calculating the average percentage difference between weighted-average prices at the two different levels, and applying this percentage to the price to be adjusted. To avoid double-counting adjustments, the regulation stipulates that price differences will be measured after making price adjustments required under other provisions, such as adjustments for movement and selling expenses under section 773(a)(6) of the Act. One commentator recommended limiting the adjustment to the difference between the lowest price at the more advanced level of trade and the highest price at the less advanced level of trade. The Department does not agree that this would be appropriate, because it would reflect price extremes rather than usual prices. Another commentator recommended that the regulations specifically exclude from the measurement of a level of trade adjustment related party prices that fail the arm's-length test and all sales deemed outside the ordinary course of trade. The Department has not included such regulations, because we have little experience in this area and will need time to develop the appropriate methodology. To attempt to further circumscribe this adjustment by regulation could have unintended consequences that would be difficult to correct in an actual case.

Paragraph (d) elaborates on the constructed export price offset contained in section 773(a)(7)(B) by providing a definition of the indirect expenses that make up this offset.

One commentator suggested that the regulations specify that in CEP calculations there is a presumption that there will be a level of trade adjustment or the offset. The Department has not included such a regulation. It would not be appropriate to assume that the CEP is at a different level of trade than the prices used as the basis of normal value or that any such differences in level of trade affect price comparability.

Section 351.413

Section 351.413, describing the authority to disregard insignificant adjustments, is unchanged from section 353.59(a) of the Department's prior regulations.

Section 351.414

Section 351.414 implements section 777A(d) of the Act, and deals with the three methods authorized by the statute for determining whether sales at less than fair value exist. Paragraph (b) is a definitional section which coins shorthand expressions for the three methods in order to render the remainder of § 353.414 less cumbersome.

Methodological Preferences: The methodological preferences set forth in the SAA are codified in paragraph (c). Consistent with the SAA, at 842–43, paragraph (c)(1) provides that the preferred method in an antidumping investigation will be the average-to-average method, and that the preferred method in an antidumping review will be the average-to-transaction method.

In the case of reviews, there were numerous comments regarding the use of the average-to-average method. The Department has not adopted the suggestion of one commentator that the regulations provide that the average-to-average method is the preferred method in a review. Although section 777A(d)(2) of the Act does not expressly state that the average-to-transaction method is the preferred method in a review, the SAA expressly states that it is the ''preferred methodology.''

Conversely, the Department has not adopted the suggestion of several commentators that the regulations preclude use of the average-to-average method in a review. Although the average-to-transaction method is clearly the preferred method in a review, neither the statute nor the SAA affect the Department's preexisting authority under section 777A(a) of the Act to use the average-to-average method in reviews under the appropriate circumstances. In this regard, several commentators urged that the Department adopt a regulation expressly acknowledging that the average-to-average method may be used in reviews. The regulations do not include such a provision, because the Department believes that the statute and these regulations are sufficiently clear regarding the propriety of using the average-to-average method in reviews.

Several commentators argued that the average-to-average method should be used whenever normal value is based on constructed value. As with any comparisons, the preferences of the statute and these regulations apply. In investigations, the preferred method, including comparisons with constructed

value, is average to average. In reviews, it is average to transaction.

We also have not adopted a suggestion that the regulations provide that in cases involving highly perishable agricultural products, the preferred approach will be to use the average-to-average method, with averages being calculated over the market cycle. In the past, the Department has used the average-to-average method in cases involving perishable agricultural products, and believes that the administrative and judicial precedents arising out of these cases would continue to be valid under the new statute and these regulations. See e.g., *Floral Trade Council of Davis, Cal.* v. *United States,* 606 F. Supp. 695, 703 (CIT 1991). However, at this time, the Department does not believe it has sufficient experience with these types of cases to warrant the creation of a regulatory preference in favor of the average-to-average method in all cases of this type. Likewise, the Department does not consider it appropriate to create a regulatory preference for averaging over the market cycle. At this point, the Department believes it is more appropriate to decide these issues on a case-by-case basis.

Paragraph (c)(1) also makes clear that the transaction-to-transaction method will only be used in unusual circumstances, as urged by several commentators. In addition, one commentator stated that a regulation should provide details regarding the Department's application of this method. The Department does not believe it appropriate at this time to go beyond what is already included in the SAA; namely, that this method ''would be appropriate in situations where there are very few sales and the merchandise sold in each market is identical or very similar or is custom-made.'' SAA, at 842.

Application of the Average-to-Average Method: Paragraph (d) deals with the application of the average-to-average method. Paragraph (d)(1) provides that the Secretary will identify those sales to the United States that are comparable to each other and include such sales in an ''averaging group.'' The Secretary then will compare the weighted average of the export prices or constructed export prices of the sales included within a particular averaging group to the weighted average of the normal values of such sales.

Paragraph (d)(2) deals with the identification of the averaging group. In this regard, several commentators suggested that the regulations provide for the use of various percentage benchmarks or rules of thumb in identifying averaging groups. Paragraph (d)(2) does not adopt these suggestions.

The SAA, at 842, provides the following guidance on this subject:

> To ensure that these averages are meaningful, Commerce will calculate averages for comparable sales of subject merchandise to the U.S. and sales of foreign like products. In determining the comparability of sales for purposes of inclusion in a particular average, Commerce will consider factors it deems appropriate, such as the physical characteristics of the merchandise, the region of the country in which the merchandise is sold, the time period, and the class of customer involved. For example, in the case of 13″ and 21″ televisions, average normal values would be calculated for each size of television, not a single average for sales of both sizes of televisions.

Although the SAA describes the factors that the Department will consider in identifying an averaging group, it does not prescribe exactly how these factors should be applied.

On the other hand, the Department appreciates the need for guidance concerning the application of what is, for practical purposes, a new method of determining sales at less than fair value. Thus, paragraph (d)(2) provides that in identifying an averaging group, the Secretary will rely primarily on comparability in physical characteristics of the merchandise and the level of trade at which the sales to the United States occur. These two factors are the easiest to identify, are the most likely to have an effect on sales comparability, and the Department has used them in the past for purposes of identifying comparison transactions. The Secretary also will consider, but give less weight to, the region of the United States in which the merchandise is sold, the class of customer involved, and such other factors as the Secretary considers relevant. While it is not possible to reduce the identification of averaging groups to a precise formula with respect to these two factors, the Department's general approach will be to look for clear dividing lines among the sales, and to ignore minor differences between sales.

With respect to the factor of physical characteristics, the views of the commentators were widely divergent. Some commentators appeared to suggest that all merchandise falling within a ''such or similar group,'' as that term has been used in Department practice, should be regarded as comparable and, thus, included in the same averaging group. Other commentators essentially suggested that averaging groups be identified on a model-specific basis or on the basis of control numbers (''CONNUMS''), a term used in the Department's computer programs to identify the specific merchandise sold in each market. Still others have suggested that the Department determine comparability by applying its ''20 percent difmer'' guideline, a guideline used in the past for determining whether the foreign like product is such or similar to the U.S. product.

Paragraph (d)(2) limits the averaging group to ''subject merchandise identical or virtually identical in all physical characteristics.'' Thus, the Department has adopted the model specific or control number approach recommended by some commentators for selecting the physical characteristics appropriate for inclusion within the same averaging group. This is necessary and appropriate given the instruction of section 777A(d)(1) that we compare, ''the weighted average of the normal values to the weighted average of the export prices (and constructed export prices) of comparable merchandise.''

The SAA identifies time as a factor affecting the comparability of sales. Paragraph (d)(3) deals with this factor by prescribing the time period over which weighted averages will be calculated. Paragraph (d)(3) provides that the Secretary ''normally'' will calculate weighted averages for the entire period of investigation or review, but that shorter periods may be used where the normal values, export prices, or constructed export prices for sales included within an averaging group differ significantly over the course of the period of investigation or review. Where values or prices are significantly different over time, it is fair to assume that time has affected sales comparability.

On this issue, too, the comments reflected widely divergent views. Some commentators argued that averaging always be done over the entire period of investigation or review. Others suggested that the averaging period not exceed one month. Still others suggested a ''normal'' rule of one year or six months, with shorter periods in cases involving industries where prices change more quickly. The approach of paragraph (d)(3) is along the lines of the latter suggestion.

Application of the Average-to-Transaction Method: Paragraph (e) deals with the application of the average-to-transaction method. Consistent with the SAA, at 843, paragraph (e)(1) provides that where normal value is based on price, the Department will limit its averaging of such prices to sales incurred during the ''contemporaneous month.'' Paragraph (e)(2), in turn, defines ''contemporaneous month.'' In

response to a suggestion made by several commentators, paragraph (e)(2) essentially codifies the Department's longstanding ''90/60'' day rule.

Targeted Dumping: Paragraph (f) deals with the so-called ''targeted dumping'' provision in section 777A(d)(1)(B) of the Act. Notwithstanding the general preference for the use of the average-to-average method in an antidumping investigation, the average-to-transaction method may be used where targeted dumping exists. Paragraph (f)(1) sets forth the standard to be applied in identifying targeted dumping, and, with one exception, tracks the language of the statute. The exception is that the Department has incorporated the suggestion made by several commentators, including both domestic and respondent interests, that the Department employ standard statistical techniques, in identifying targeted dumping.

Some commentators advocated that the regulations clarify the statutory provision in various ways, such as through the use of ''bright line'' standards for identifying targeted dumping. Other commentators opposed the adoption of bright line standards. In general, the Department has not attempted to elaborate on the language of section 777A(d)(1)(B), given its lack of experience with this provision. More specifically, the Department has eschewed the adoption of bright line standards for the time being. First, the SAA, at 843, states that the Department ''will proceed on a case-by-case basis, because small differences may be significant for one industry or one type of product, but not for another.'' A bright line test would be inconsistent with this case-by-case approach. Second, the commentators differed widely with respect to where the ''bright line'' should be drawn, and, given our lack of experience with this provision, the Department has no basis for selecting a bright line on its own. While it may be possible in the future to establish bright line rules-of-thumb as rebuttable presumptions, at this point it would be premature to do so.

Some commentators suggested a regulation stating that the targeted dumping provision will be narrowly construed, while other commentators argued for a liberal construction. Because the statute and its legislative history do not support either construction, the Department has not adopted either of these suggestions.

In addition to the comments described above, the Department received numerous comments that, while falling short of bright line standards, nonetheless went in the direction of establishing per se rules. These comments included:

- If the prices of the preponderance of sales alleged to be part of the targeted dumping are within the range of prices of the non-target sales, then targeted dumping is not taking place.
- Price variations due to seasonal demand should not be deemed to constitute targeted dumping.
- Any trend within the subset of alleged targeted dumped sales must be substantially uniform among the subset of sales.
- Mere differences in price over time will rarely, if ever, be sufficient to constitute targeted dumping.
- Targeted dumping automatically exists whenever there are significant individual sales made at prices substantially below a firm's prevailing price.

Most of these comments raise factors that the Department legitimately should consider in conducting an analysis of targeted dumping in an actual antidumping investigation. In particular, the Department recognizes that the statute requires that there be a ''pattern'' of sales at significantly different prices. We do not believe that targeted dumping exists where the price differences are simply random or spurious price fluctuations. In our view, targeting means that, within the industry under consideration, the price differences suggest a meaningful pattern. However, for the same reason that the Department is unwilling to adopt bright line standards at this time, the Department is unwilling to adopt *per se* rules or even rebuttable presumptions. Several commentators advocated a regulation which would state that targeted dumping does not exist if the same pattern of sales exists in both the U.S. and the comparison market. We have not adopted this suggestion for these proposed rules. We are interested, however, in receiving comments from parties on the factors to be considered in deciding whether the average-to-average methodology takes account of patterns of significantly different export prices.

One commentator stated that the regulations should state that a targeted dumping analysis will be done on a respondent- and model-specific basis. With respect to a respondent-specific analysis, we think it is self-evident that a targeted dumping analysis would be respondent-specific. Thus, we see no need for a regulation on this point. With respect to a model-specific analysis, while we would expect that a targeted dumping analysis normally would consider whether sales of particular models constitute targeted dumping, we are reluctant at this time to go beyond the language of the statute, because other modes of analysis also might be appropriate.

Paragraph (f)(2) deals with the sales to which the average-to-transaction method is applied when targeted dumping is found, a question which neither the statute nor the SAA expressly addresses. Paragraph (f)(2) provides that ''normally'' the average-to-transaction method will be limited to those sales determined to constitute targeted dumping. The average-to-average method would be applied to the remaining sales.

At least one commentator suggested that if targeted dumping is found with respect to a particular firm, the average-to-transaction method should be used with respect to all of that firm's sales. The Department has not adopted this suggestion, because in many instances such an approach would be unreasonable and unduly punitive. For example, if targeted dumping accounted for only 1 percent of a firm's total sales, there would not appear to be any basis for applying the average-to-transaction method to those sales accounting for the remaining 99 percent.

At the other extreme, some commentators suggested that the average-to-transaction method always should be limited to those sales that constitute targeted dumping. The Department has not adopted this suggestion either, because there may be situations in which targeted dumping by a firm is so pervasive that the average-to-transaction method becomes the best benchmark for gauging the fairness of that firm's pricing practices.

Paragraph (f)(3) deals with allegations of targeted dumping. Many commentators suggested that the Department should only analyze targeted dumping if the petitioner satisfies a minimum evidentiary threshold. The Department agrees that those interested parties familiar with the market for the subject merchandise are in the best position to direct the Department's attention toward possible targeted dumping. Thus, it will examine whether targeted dumping is occurring only after receipt of a sufficient allegation that such targeting is taking place, and that the average-to-average or, when appropriate, transaction-to-transaction methods cannot adequately deal with the alleged targeting. The requirement of an allegation should not pose a significant burden on a domestic interested party, because the allegation can be based on information that is readily available in the record of the proceeding.

Paragraph (g) deals with requests for information. The first sentence of paragraph (g) provides that the Secretary will request information relevant to the identification of averaging groups and to the analysis of targeted dumping. The Department does not agree with the implication in the commentators' statements that it should not collect detailed, transaction-specific information in the absence of an allegation. First, the SAA, at 843, specifically provides that the Department will collect such transaction-specific information. Second, the information is necessary to permit the interested parties to reach reasonable judgements regarding the possibility that there is targeted dumping. In this regard, the Department is concerned that the prohibition against the release under APO of business proprietary customer names in investigations not serve as a bar to possible allegations. The Department will make every effort to ensure that public summaries provide the parties with adequate information.

The second sentence of paragraph (g) provides that if a response to a request for information relevant to the identification of averaging groups and targeted dumping is such as to warrant the application of the facts otherwise available, the Secretary may apply the average-to-transaction method to all of the particular respondent's sales. This approach was suggested by one commentator, although a different commentator argued that there was no need for a special ''facts available'' rule for price averaging. While it may be true that, as a legal matter, the general ''facts available'' provisions of the statute and these regulations are sufficiently broad to authorize the use of the average-to-transaction method in the types of situation under discussion, the Department believes that it would be useful to clarify in advance the possible consequences of failing to provide adequate and timely responses to requests for transaction-specific information.

One commentator suggested that if the Department employs the targeted dumping exception, it should present its explanation for using the exception in its preliminary determination so that all parties have an opportunity to comment on the issue. The Department agrees with the basic proposition that all parties should have ample opportunity to comment on all issues in an antidumping proceeding. However, the Department does not consider it advisable to promulgate a regulation which would prohibit the application of the targeted dumping exception in a final determination if that exception had not been applied in the preliminary determination. Among other things, it would render petitioners' right to comment on the issue meaningless in cases where the Department did not invoke the exception in a preliminary determination. In general, the Department anticipates that issues relating to price averaging and targeted dumping will be among the first to be raised by the parties to an antidumping investigation, and that parties will have ample opportunity to submit comments.

Section 351.415

Section 351.415 implements section 777A of the Act, which provides for the selection of the exchange rate used to convert foreign currencies to U.S. dollars. The Department's past practice, as specified in § 353.60 of the prior regulations, was to convert normal value at the exchange rate used by the U.S. Customs Service to convert foreign currencies for duty assessment purposes.

Paragraph (a) requires the Department to convert foreign currencies at the exchange rate in effect on the date of the U.S. sale, subject to certain exceptions. First, as reflected in paragraph (b), if the U.S. sale is tied directly to a forward exchange contract, the Department will convert normal value at the forward rate. In accordance with the SAA, at 842, group sales of currency on forward markets will be allowed, provided that the exchange transaction can be linked to the export sale. Second, as reflected in paragraph (c), fluctuations in the daily exchange rates are to be ignored and, third, as reflected in paragraph (d), respondents in an investigation must be granted at least 60 days to adjust prices after a sustained movement in the exchange rate.

The statute does not provide guidance on how to recognize a sustained movement or fluctuation. The SAA, at 841, provides that the Department is to adopt regulations to implement section 777A. We have not expanded on the statute in these proposed regulations because the provisions concerning daily rates, fluctuations and sustained movements are new, and we have had little practical experience. We believe, therefore, that it is preferable to implement the new requirements through an exchange rate model announced in a policy bulletin, which will afford us the ability to adjust practice based on experience.

We plan to use the model for one year and then evaluate its performance based on public comment. We then will alter the model as necessary, and expand the regulations to provide more extensive guidance.

The Department has designed the model with three goals in mind:

1. To implement the requirements of the statute in as simple a manner as possible;
2. To ensure that all exporters, whether or not under order, can estimate the daily exchange rate that the Department will employ in an antidumping analysis at the time they set their U.S. prices; and
3. To capture the model in simple computer code to reduce the administrative burden on the Department and parties wishing to monitor exchange rates.

As required by the statute, the model has been designed to convert a file of actual daily exchange rates to a file of ''official'' daily exchange rates, which will be used to convert normal value to U.S. dollars. In this process, the Department will classify each actual daily exchange rate as normal or ''fluctuating.'' An extended pattern of fluctuating rates will define a ''sustained movement.'' Based on these classifications, the model will assign the appropriate exchange rate for each day. This model is not suitable for use with hyper-inflating currencies. In these cases, we intend to use the daily rate absent compelling evidence that a fluctuation or sustained movement in the currency's value has occurred.

We will prepare the file of official daily exchange rates by processing the daily rate for all 32 currencies collected and certified by the New York Federal Reserve Bank. We intend to create files of official rates on a monthly basis and to post these files on the Internet to facilitate wide access to the rates. We also will continue our practice of providing rates on diskette for a small fee. In addition, we will make the model's computer code widely available to any party wishing to create the file of official rates.

Subpart F—Subsidy Determinations Regarding Cheese Subject to an In-Quota Rate of Duty

Subpart F of Part 351 deals with subsidy determinations regarding cheese subject to an in-quota rate of duty pursuant to section 702(a) of the Trade Agreements Act of 1979. Once known as the ''quota cheese provision,'' the URAA amended section 702(a) and related provisions to conform to the WTO Agreement on Agriculture. In particular, the URAA eliminated the requirement that the President impose quantitative restrictions on cheese where price-undercutting conditions exist, because such restrictions would be inconsistent with Article 4.2 of the Agreement on Agriculture. However, the United States retains the right to impose

fees on within-quota quantities where the price-undercutting conditions of section 702 exist. See SAA, page 729.

Because the URAA did not significantly change the Department's role under section 702, Subpart F is largely identical to existing Part 355, Subpart D. The principal changes are the elimination of material that merely repeats the statute and the substitution of the term ''cheese subject to an in-quota rate of duty'' for the term ''quota cheese.''

Classification

E.O. 12866

This proposed rule has been determined to be significant under E.O. 12866.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if promulgated as final, would not have a significant economic impact on a substantial number of small entities. The Department does not believe that there will be any substantive effect on the outcome of antidumping and countervailing duty proceedings as a result of the streamlining and simplification of their administration. With respect to the substantive amendments implementing the Uruguay Round Agreements Act, the Department believes that these regulations benefit both petitioners and respondents without favoring either, and, therefore, would not have a significant economic effects. As such, an initial regulatory flexibility analysis was not prepared.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. This proposed rule does not contain any new reporting or recording requirements subject to the Paperwork Reduction Act. The collections of information contained in this rule are currently approved by the Office of Management and Budget under OMB Control Numbers 0625–0105, 0625–0148, and 0625–0200. The public reporting burdens for these collections of information are estimated to average 40 hours for the antidumping and countervailing duty petition requirements, and 15 hours for the initiation of downstream product monitoring. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, D.C. 20503.

E.O. 12612

This proposed rule does not contain federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects

19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Investigations, Reporting and recordkeeping requirments.

19 CFR Part 353

Administrative practice and procedure, Antidumping, Business and industry, Confidential business information, Investigations, Reporting and recordkeeping requirements.

19 CFR Part 355

Administrative practice and procedure, Business and industry, Cheese, Confidential business information, Countervailing duties, Freedom of Information, Investigations, Reporting and recordkeeping requirements.

Dated: February 15, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

For the reasons stated, it is proposed to amend 19 CFR chapter III as follows:

PARTS 353 AND 355 [REMOVED]

1. Parts 353 and 355 are removed.

2. A new Part 351 is added to read as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

Subpart A—Scope and Definitions

Sec.

Subpart B—Antidumping and Countervailing Duty Procedures

Subpart C—Information and Argument

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note, 1303 note, 1671 et seq., and 3538.

PART 351—COUNTERVAILING AND ANTIDUMPING DUTIES

Subpart A—Scope and Definitions

§ 351.101 Scope.

(a) *In general.* This part contains procedures and rules applicable to antidumping and countervailing duty proceedings under Title VII of the Act (19 U.S.C. 1671 *et seq.*), and also determinations regarding cheese subject to an in-quota rate of duty under section 702 of the Trade Agreements Act of 1979 (19 U.S.C. 1202 note). This part reflects statutory amendments made by titles I, II, and IV of the Uruguay Round Agreements Act, Public Law 103–465, which, in turn, implement into United States law the provisions of the following agreements annexed to the Agreement Establishing the World Trade Organization: Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994; Agreement on Subsidies and Countervailing Measures; and Agreement on Agriculture.

(b) *Countervailing duty investigations involving imports not entitled to a material injury determination.* Under section 701(c) of the Act, certain provisions of the Act do not apply to countervailing duty proceedings involving imports from a country that is not a Subsidies Agreement country and is not entitled to a material injury determination by the Commission. Accordingly, certain provisions of this Part referring to the Commission may not apply to such proceedings.

(c) *Application to governmental importations.* To the extent authorized by section 771(20) of the Act, merchandise imported by, or for the use of, a department or agency of the United States Government is subject to the imposition of countervailing duties or antidumping duties under this part.

§ 351.102 Definitions.

(a) *Introduction.* The Act contains many technical terms applicable to antidumping and countervailing duty proceedings. This section:

(1) Defines terms that appear in the Act but are not defined in the Act;

(2) Defines terms that appear in this Part but do not appear in the Act; and

(3) Elaborates on the meaning of certain terms that are defined in the Act.

In the case of terms that are not defined in this section or other sections of this Part, readers should refer to the relevant provisions of the Act.

(b) *Definitions.*

Act. ''Act'' means the Tariff Act of 1930, as amended.

Administrative review. ''Administrative review'' means a review under section 751(a)(1) of the Act.

Affiliated persons; affiliated parties. ''Affiliated persons'' and ''affiliated parties'' have the same meaning as in section 771(33) of the Act. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Secretary will consider the following factors, among others:

(1) Corporate or family groupings;

(2) Franchise or joint venture agreements;

(3) Debt financing; and

(4) Close supplier relationships.

Aggregate basis. ''Aggregate basis'' means the calculation of a country-wide subsidy rate based solely on information provided by the foreign government.

Anniversary month. ''Anniversary month'' means the calendar month in which the anniversary of the date of publication of an order or suspension of investigation occurs.

APO. ''APO'' means an administrative protective order described in section 777(c)(1) of the Act.

Applicant. ''Applicant'' means a representative of an interested party that has applied for access to business proprietary information under an APO.

Article 4/Article 7 Review. ''Article 4/Article 7 review'' means a review under section 751(g)(2) of the Act.

Article 8 violation review. ''Article 8 violation review'' means a review under section 751(g)(1) of the Act.

Authorized applicant. ''Authorized applicant'' means an applicant that the Secretary has authorized to receive business proprietary information under an APO under section 777(c)(1) of the Act.

Changed circumstances review. ''Changed circumstances review'' means a review under section 751(b) of the Act.

Customs Service. ''Customs Service'' means the United States Customs Service of the United States Department of the Treasury.

Department. ''Department'' means the United States Department of Commerce.

Domestic interested party. ''Domestic interested party'' means an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) of the Act.

Expedited antidumping review. ''Expedited antidumping review'' means a review under section 736(c) of the Act.

Factual information. ''Factual information'' means:

(1) Initial and supplemental questionnaire responses;

(2) Data or statements of fact in support of allegations;

(3) Other data or statements of facts; and

(4) Documentary evidence.

Fair value. ''Fair value'' is a term used during an antidumping investigation, and is an estimate of normal value.

Importer. ''Importer'' means the person by whom, or for whose account, subject merchandise is imported.

Investigation. Under the Act and this Part, there is a distinction between an antidumping or countervailing duty investigation and a proceeding. An ''investigation'' is that segment of a proceeding that begins on the date of publication of notice of initiation of investigation and ends on the date of publication of the earliest of:

(1) Notice of termination of investigation,

(2) Notice of rescission of investigation,

(3) Notice of a negative determination that has the effect of terminating the proceeding, or

(4) An order.

New shipper review. ''New shipper review'' means a review under section 751(a)(2) of the Act.

Order. An ''order'' is an order issued by the Secretary under section 303, section 706, or section 736 of the Act or a finding under the Antidumping Act, 1921.

Ordinary course of trade. ''Ordinary course of trade'' has the same meaning as in section 771(15) of the Act. The Secretary may consider sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are extraordinary for the market in question (such as sales or transactions involving off-quality merchandise or merchandise produced according to unusual product specifications), merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price.

Party to the proceeding. ''Party to the proceeding'' means any interested party that actively participates, through written submissions of factual information or written argument, in a segment of a proceeding. Participation in a prior segment of a proceeding will not confer on any interested party ''party to the proceeding'' status in a subsequent segment.

Person. ''Person'' includes any interested party as well as any other individual, enterprise, or entity, as appropriate.

Proceeding. A ''proceeding'' begins on the date of the filing of a petition under section 702(b) or section 732(b) of the Act or the publication of a notice of initiation in a self-initiated investigation under section 702(a) or section 732(a) of the Act, and ends on the date of publication of the earliest notice of:

(1) Dismissal of petition,

(2) Rescission of initiation,

(3) Termination of investigation,

(4) A negative determination that has the effect of terminating the proceeding,

(5) Revocation of an order, or

(6) Termination of a suspended investigation.

Rates. ''Rates'' means the individual weighted-average dumping margins, the individual countervailable subsidy rates, the country-wide subsidy rate, or the all-others rate, as applicable. In an antidumping proceeding involving imports from a nonmarket economy country, ''rates'' may consist of a single dumping margin applicable to all exporters and producers.

Respondent interested party. ''Respondent interested party'' means an interested party described in subparagraph (A) or (B) of section 771(9) of the Act.

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

Secretary. ''Secretary'' means the Secretary of Commerce or a designee. The Secretary has delegated to the Assistant Secretary for Import Administration the authority to make determinations under Title VII of the Act and this Part.

Section 753 review. ''Section 753 review'' means a review under section 753 of the Act.

Section 762 review. ''Section 762 review'' means a review under section 762 of the Act.

Segment of proceeding.

(1) *In general.* An antidumping or countervailing duty proceeding consists of one or more segments. ''Segment of a proceeding'' or ''segment of the proceeding'' refers to a portion of the proceeding that is reviewable under section 516A of the Act.

(2) *Examples.* An antidumping or countervailing duty investigation or a review of an order or suspended investigation each would constitute a segment of a proceeding.

Sunset review. ''Sunset review'' means a review under section 751(c) of the Act.

Third country. For purposes of subpart D, ''third country'' means a country other than the exporting country and the United States. Under section 773(a) of the Act and subpart D, in certain circumstances the Secretary may determine normal value on the basis of sales to a third country.

URAA. ''URAA'' means the Uruguay Round Agreements Act.

§ 351.103 Central Records Unit.

(a) *In general.* Import Administration's Central Records Unit is located at Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230. The office hours of the Central Records Unit are between 8:30 a.m. and 5:00 p.m. on business days. Among other things, the Central Records Unit is responsible for maintaining an official and public record for each antidumping and countervailing duty proceeding (see § 351.104), the Subsidies Library (see section 775(2) and section 777(a)(1) of the Act), and the service list for each proceeding (see paragraph (c) of this section).

(b) *Filing of documents with the Department.* While persons are free to provide Department officials with courtesy copies of documents, no document will be considered as having been received by the Secretary unless it is submitted to the Central Records Unit and is stamped by the Central Records Unit with the date and time of receipt.

(c) *Service list.* The Central Records Unit will maintain and make available a service list for each segment of a proceeding. Each interested party that asks to be included on the service list for a segment of a proceeding must designate a person to receive service of documents filed in that segment. The service list for an application for a scope ruling is described in § 351.225(n).

§ 351.104 Record of proceedings.

(a) *Official record.* (1) *In general.* The Secretary will maintain in the Central Records Unit an official record of each antidumping and countervailing duty proceeding. The Secretary will include in the official record all factual information, written argument, or other material developed by, presented to, or obtained by the Secretary during the course of a proceeding that pertains to the proceeding. The official record will include government memoranda pertaining to the proceeding, memoranda of ex parte meetings, determinations, notices published in the Federal Register, and transcripts of hearings. The official record will contain material that is public, business proprietary, privileged, and classified. For purposes of section 516A(b)(2) of the Act, the record is the official record of each segment of the proceeding.

(2) *Material returned.*

(i) The Secretary, in making any determination under this part, will not use factual information, written argument, or other material that the Secretary returns to the submitter.

(ii) The official record will include a copy of a returned document, solely for purposes of establishing and documenting the basis for returning the

document to the submitter, if the document was returned because:

(A) the document, although otherwise timely, contains untimely filed new factual information (see § 351.301(b));

(B) the submitter made a nonconforming request for business proprietary treatment of factual information (see § 351.304);

(C) the Secretary denied a request for business proprietary treatment of factual information (see § 351.304);

(D) the submitter is unwilling to permit the disclosure of business proprietary information under APO (see § 351.304).

(iii) In no case will the official record include any document that the Secretary returns to the submitter as untimely filed, or any unsolicited questionnaire response unless the response is a voluntary response accepted under § 351.204(d) (see § 351.302(d)).

(b) *Public record.* The Secretary will maintain in the Central Records Unit a public record of each proceeding. The record will consist of all material contained in the official record (see paragraph (a) of this section) that the Secretary decides is public information under § 351.105(b), government memoranda or portions of memoranda that the Secretary decides may be disclosed to the general public, and public versions of all determinations, notices, and transcripts. The public record will be available to the public for inspection and copying in the Central Records Unit (see § 351.103). The Secretary will charge an appropriate fee for providing copies of documents.

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

§ 351.105. Public, business proprietary, privileged, and classified information.

(a) *Introduction.* There are four categories of information in an antidumping or countervailing duty proceeding: public, business proprietary, privileged, and classified. In general, public information is information that may be made available to the public, whereas business proprietary information may be disclosed (if at all) only to authorized applicants under an APO. Privileged and classified information may not be disclosed at all, even under an APO. This section describes the four categories of information.

(b) *Public information.* The Secretary normally will consider the following to be public information:

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

(2) Factual information that is not designated as business proprietary by the person submitting it;

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

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

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

(c) *Business proprietary information.* The Secretary normally will consider the following factual information to be business proprietary information, if so designated by the submitter:

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

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

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

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

(5) Prices of individual sales, likely sales, or other offers (but not components of prices, such as transportation, if based on published schedules, dates of sale, product descriptions (other than business or trade secrets described in paragraph (c)(1) of this section), or order numbers);

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

(7) In an antidumping proceeding, the exact amount of the dumping margin on individual sales;

(8) In a countervailing duty proceeding, the exact amount of the benefit applied for or received by a person from each of the programs under investigation or review (but not descriptions of the operations of the programs, or the amount if included in official public statements or documents or publications, or the ad valorem countervailable subsidy rate calculated for each person under a program);

(9) The names of particular persons from whom business proprietary information was obtained;

(10) The position of a domestic producer or workers regarding a petition; and

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

(d) *Privileged information.* The Secretary will consider information privileged if, based on principles of law concerning privileged information, the Secretary decides that the information should not be released to the public or to parties to the proceeding. Privileged information is exempt from disclosure to the public or to representatives of interested parties.

(e) *Classified information.* Classified information is information that is classified under Executive Order No. 12356 of April 2, 1982 (47 FR 14874 and 15557, 3 CFR 1982 Comp. p. 166), or successor executive order, if applicable. Classified information is exempt from disclosure to the public or to representatives of interested parties.

§ 351.106 De minimis net countervailable subsidies and weighted-average dumping margins disregarded.

(a) *Introduction.* Prior to the enactment of the URAA, the Department had a well-established and judicially sanctioned practice of disregarding net countervailable subsidies or weighted-average dumping margins that were de minimis. The URAA codified in the Act the particular de minimis standards to be used in antidumping and countervailing duty investigations. This section discussed the application of the de minimis standards in antidumping or countervailing duty proceedings.

(b) *Investigations.* (1) *In general.* In making a preliminary or final antidumping or countervailing duty determination in an investigation (see sections 703(b), 733(b), 705(a), and 735(a) of the Act), the Secretary will apply the de minimis standard set forth in section 703(b)(4) or section 733(b)(3) of the Act (whichever is applicable).

(2) *Transition rule.* (i) If:

(A) The Secretary resumes an investigation that has been suspended (see section 704(i)(1)(B) or section 734(i)(1)(B) of the Act); and

(B) the investigation was initiated before January 1, 1995, then

(ii) The Secretary will apply the de minimis standard in effect at the time that the investigation was initiated.

(c) *Reviews and other determinations.* (1) *In general.* In making any determination other than a preliminary or final antidumping or countervailing duty determination in an investigation (see paragraph (b) of this section), the

Secretary will treat as de minimis any weighted-average dumping margin or countervailable subsidy rate that is less than 0.5% ad valorem, or the equivalent specific rate.

(2) *Assessment of antidumping duties.* The Secretary will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the relevant period of review made by any person for which the Secretary calculates an assessment rate under § 351.212(b)(1) that is less than 0.5 percent ad valorem, or the equivalent specific rate.

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 petition filed by a domestic interested party or at the Secretary's own initiative. This section contains rules regarding 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 ''Initiation of Antidumping (Countervailing Duty) Investigation.'' In addition, 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 determination.

(c) *Persistent dumping monitoring.* To the extent practicable, the Secretary will expedite any antidumping investigation 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 normally initiates antidumping and countervailing duty investigations based on petitions filed by a domestic interested party. This section contains rules concerning the contents of a petition, filing requirements, notification of foreign governments, pre-initiation communications with the Secretary, and assistance to small businesses in preparing petitions.

(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 and address of the petitioner and any person the petitioner represents;

(2) The identity of the industry on behalf of which the petitioner is filing, including the names and addresses of 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 and address 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).

(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 Deputy Assistant Secretary for Investigations, Import Administration, International Trade Administration, Room 3099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; (202) 482–5497.

(i) *Pre-initiation communications.* (1) *In general.* During the period before the Secretary's decision whether to initiate an investigation, communications with the Department will be governed by section 702(b)(4)(B) or section 732(b)(3)(B) of the Act (whichever is applicable). The Secretary will not consider the filing of a notice of appearance to constitute a communication.

(2) *Consultations with foreign governments in countervailing duty proceedings.* In a countervailing duty proceeding, the Secretary will invite the government of any exporting country named in the petition for consultations with respect to the petition.

(The information collection requirements in paragraph (a) of this section have been approved by the Office of Management and Budget under control number 0625–0105.)

§ 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 (whichever is applicable).

(2) *Extension where polling required.* If the Secretary is required to poll or otherwise determine support for the petition under section 702(c)(4)(D) or section 732(c)(4)(D) of the Act, the Secretary may, in exceptional circumstances, extend the 20-day period by the amount of time necessary to collect and analyze the required information. In no case will the period between the filing of a petition and the determination whether to initiate an investigation exceed 40 days.

(c) *Notice of initiation and distribution of petition.* (1) *Notice of initiation.* If the initiation determination of the Secretary under section 702(c)(1)(A) or section 732(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.

(2) *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).

(d) *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.''

(e) *Determination of industry support.* In determining industry support for a petition under section 702(c)(4) or section 732(c)(4) 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(b)(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) *Special rule for regional industries.* Under section 702(c)(4)(C) or section 732(c)(4)(C) of the Act, the applicable region will be the region specified in the petition.

(6) *Polling the industry.* In conducting a poll of the industry under section 702(c)(4)(D)(i) or section 732(c)(4)(D)(i) 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 Transactions 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 government and 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 selected for individual examination) in accordance with section 782(a) of the Act.

(2) *Acceptance of voluntary respondents.* After receiving a voluntary response filed in accordance with section 782(a) of the Act, the Secretary will determine, as soon as practicable, whether to examine the voluntary respondent individually. A voluntary respondent accepted for individual examination will be subject to the same requirements as an exporter or producer initially selected by the Secretary for individual examination, including, 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.

(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 703(b) or section 733(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 703(d) or section 733(d) of the Act.

(3) *Countervailing duty investigations conducted on an aggregate basis and requests for exclusion from*

countervailing 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 the investigation; and

(iv) A certification from the government of the affected country that the government did not provide the exporter 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 if the Secretary preliminarily finds that dumping or countervailable subsidization has occurred. The remedy (sometimes referred to as ''provisional measures'') usually takes the form of a bonding requirement to ensure payment if antidumping or countervailing duties ultimately are imposed. 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

(7) In an antidumping investigation, within the deadlines set forth in section 733(b)(1)(B) of the Act if the investigation involves short life cycle merchandise (see section 733(b)(1)(B) and section 739 of the Act).

(c) *Contents of preliminary determination and publication of notice.* A preliminary determination will include a preliminary finding on critical circumstances, if appropriate, under section 703(e)(1) or section 733(e)(1) of the Act (whichever is applicable). The Secretary will publish in the Federal Register notice of ''Affirmative (Negative) Preliminary Antidumping (Countervailing Duty) Determination,'' including the rates, if any, and an invitation for argument consistent with § 351.309.

(d) *Effect of affirmative preliminary determination.* If the preliminary determination is affirmative, the Secretary will take the actions described in section 703(d) or section 733(d) of the Act (whichever is applicable). In making information available to the Commission under section 703(d)(3) or section 733(d)(3) of the Act, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the preliminary determination and which the Commission may consider relevant to its injury determination.

(e) *Postponement at the request of the petitioner.* A petitioner must submit a request for postponement of the preliminary determination (see section 703(c)(1)(A) or section 733(c)(1)(A) of the Act) 25 days or more before the scheduled date of the preliminary determination, and must state the reasons for the request. The Secretary will grant the request, unless the Secretary finds compelling reasons to deny the request.

(f) *Notice of postponement.* (1) If the Secretary decides to postpone the preliminary determination at the request of the petitioner or because the investigation is extraordinarily complicated, the Secretary will notify all parties to the proceeding not later than 20 days before the scheduled date of the preliminary determination, and will publish in the Federal Register notice of ''Postponement of Preliminary Antidumping (Countervailing Duty) Determination,'' stating the reasons for the postponement (see section 703(c)(2) or section 733(c)(2) of the Act).

(2) If the Secretary decides to postpone the preliminary determination due to an allegation of upstream subsidies, the Secretary will notify all parties to the proceeding not later than the scheduled date of the preliminary determination and will publish in the Federal Register notice of ''Postponement of Preliminary Countervailing Duty Determination,'' stating the reasons for the postponement.

§ 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 final determination, the Secretary, based on the available information, will make a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist, as defined in section 703(e)(1) or section 733(e)(1) of the Act (whichever is applicable).

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

(d) *Suspension of liquidation.* If the Secretary makes an affirmative preliminary finding of critical circumstances, the provisions of section 703(e)(2) or section 733(e)(2) of the Act (whichever is applicable) regarding the retroactive suspension of liquidation will apply.

(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.

(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.

(i) *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.

§ 351.207 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) *Withdrawal of petition; self-initiated investigations.* (1) *In general.* The Secretary may terminate an investigation under section 704(a)(1)(A) or section 734(a)(1)(A) (withdrawal of petition) or under section 704(k) or section 734(k) (self-initiated investigation) of the Act, provided that the Secretary concludes that termination is in the public interest. If the Secretary terminates an investigation, the Secretary will publish in the Federal Register notice of ''Termination of Antidumping (Countervailing Duty) Investigation,'' together with, when appropriate, a copy of any correspondence with the petitioner forming the basis of the withdrawal and the termination. (For the treatment in a subsequent investigation of records compiled in an investigation in which the petition was withdrawn, see section 704(a)(1)(B) or section 734(a)(1)(B) of the Act.)

(2) *Withdrawal of petition based on acceptance of quantitative restriction agreements.* In addition to the requirements of paragraph (b)(1) of this section, if a termination is based on the acceptance of an understanding or other kind of agreement to limit the volume of imports into the United States of the subject merchandise, the Secretary will apply the provisions of section 704(a)(2) or section 734(a)(2) of the Act (whichever is applicable) regarding public interest and consultations with consuming industries and producers and workers.

(c) *Lack of interest.* The Secretary may terminate an investigation based upon lack of interest (see section 782(h)(1) of the Act). Where the Secretary terminates an investigation under this paragraph, the Secretary will publish the notice described in paragraph (b)(1) of this section.

(d) *Negative determination.* An investigation terminates automatically upon publication in the Federal Register of the Secretary's negative final determination or the Commission's negative preliminary or final determination.

(e) *End of suspension of liquidation.* When an investigation terminates, if the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension ended on the date of publication of the notice of termination referred to in paragraph (b) of this section or on the date of publication of a negative determination referred to in paragraph (d) of this section, and will instruct the Customs Service to release any cash deposit or bond.

§ 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 (elimination of dumping or countervailable subsidization or 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 investigation involving a nonmarket economy country, 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, 5 days after the date of issuance of the preliminary determination. Where a proposed suspension agreement is submitted in an antidumping investigation, an exporter or producer or, in an antidumping 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.

(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 exporters and producers or, in an investigation involving a nonmarket economy country, the government, must submit to the Secretary any proposed suspension agreement within 15 days of the publication in the Federal Register of the antidumping or countervailing duty order.

(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; or

(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)(ii) 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 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)(ii) 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)(ii) of this section, 45 days after the date of issuance of an order.

(2) If the Secretary accepts an agreement to suspend an investigation, 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. If the Secretary has not

already published notice of an affirmative preliminary determination, the Secretary will include that notice. In accepting an agreement, the Secretary may rely on factual or legal conclusions the Secretary reached in or after the affirmative preliminary determination.

(h) *Continuation of investigation.* (1) A request to the Secretary under section 704(g) or section 734(g) of the Act for the continuation of the investigation must be made in writing. In addition, the request must be simultaneously filed with the Commission, and the requester must so certify in submitting the request to the Secretary.

(2) If the Secretary and the Commission make affirmative final determinations in an investigation that has been continued, the suspension agreement will remain in effect in accordance with the factual and legal conclusions in the Secretary's final determination. If either the Secretary or the Commission makes a negative final determination, the agreement will have no force or effect.

(i) *Merchandise imported in excess of allowed quantity.* (1) The Secretary may instruct the Customs Service not to accept entries, or withdrawals from warehouse, for consumption of 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 revisions 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, update previously submitted information where the Secretary deems it appropriate to do so, 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 order 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 90 days before the date of publication of the notice of suspension of liquidation or 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(l) 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(l) 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 noncompliance 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 countervailable subsidization is occurring. If the final determination is negative, the proceeding, including the injury investigation conducted by the Commission, terminates. If the final determination is affirmative, in most instances the Commission issues a final injury determination. In addition, if the preliminary determination was negative but the final determination is affirmative, the Secretary will impose provisional measures. 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 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) 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, or 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.* 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.

(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)(i) 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 will 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 the Secretary publishes a countervailing duty order.

(i) *Postponement of final countervailing duty determination for simultaneous investigations.* A request by the petitioner to postpone a final countervailing duty determination to the date of the final antidumping determination must be submitted in writing within five days of the date of publication of the preliminary countervailing duty determination (see section 705(a)(1) and paragraph (b)(4) of this section).

(j) *Commission access to information.* If the final determination is affirmative, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the final determination and that the Commission may consider relevant to its injury determination (see section 705(c)(1)(A) or section 735(c)(1)(A) of the Act).

(k) *Effect of negative final determination.* An investigation terminates upon publication in the Federal Register of the Secretary's or the Commission's negative final determination, and the Secretary will take the relevant actions described in section 705(c)(2) or section 735(c)(2) of the Act (whichever is applicable).

§ 351.211 Antidumping order and countervailing duty order.

(a) *Introduction.* The Secretary issues an order when both the Secretary and the Commission (except in the case of merchandise from a non-Subsidies Agreement country) 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).

(c) *Special rule for regional industries.* (1) *In general.* If the Commission, in its affirmative final injury determination, finds a regional industry under section 771(4)(C) of the Act, the Secretary will, to the maximum extent possible, modify the contents of an order in a manner consistent with section 706(c) or section 736(d) of the Act (whichever is applicable).

(2) *Request for exception from the assessment of duties.* An exporter or producer seeking an exception from the assessment of antidumping or countervailing duties (see section 706(c) or section 736(d) of the Act) must submit a certification that it did not export subject merchandise for sale in the region concerned during the 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. In addition, each such exporter or producer must submit a certification from each of its 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 period of investigation. These certificates must be submitted to the Secretary no later than fifteen days after the issuance of the Commission's affirmative final determination.

§ 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 rates included in the final results of the review 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 rates determined in the most recently completed segment of the proceeding, 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.

§ 351.213 Administrative review of orders and suspension agreements under section 751(a)(1) of the Act.

(a) *Introduction.* As noted in § 351.212(a), the United States has a ''retrospective'' assessment system under which final liability for antidumping and countervailing duties is 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) of the subject merchandise imported by that importer.

(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) The exporter or producer for which deferral is requested, importers of subject merchandise of that exporter or producer, domestic interested parties, or, in a countervailing duty proceeding, the foreign government do not object to the deferral.

(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) will run from the last day of the next anniversary month.

(d) *Rescission of administrative review.* (1) *Withdrawal of request for review.* The Secretary may rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request not later than 90 days after the date of publication of notice of initiation of the requested review.

(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.

(f) *Voluntary respondents.* In an administrative review, the Secretary will examine voluntary respondents in accordance with section 782(a) of the Act and § 351.204(d).

(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 within 30 days of the 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 which is affiliated with such exporter or producer. The Secretary will notify the Commission of its findings regarding such duty absorption.

(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.

(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 the review; and

(iv) A certification from the government of the affected country that the government did not provide the exporter 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.

§ 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 noninvestigated exporters in certain countervailing duty proceedings and procedures for conducting such reviews.

(b) *Request for new shipper review.* A request for a new shipper review under section 751(a)(2)(B) of the Act must contain the following:

(1) 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;

(2) If the person requesting the review is the exporter, but not the producer, of the subject merchandise:

(i) The certification described in paragraph (b)(1) of this section; and

(ii) 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;

(3)(i) A certification that, since the investigation was initiated, such exporter or producer has not been affiliated with any exporter or producer who exported the subject merchandise to the United States (or in the case of a regional industry, who exported the subject merchandise for sale in the region concerned) during the period of investigation, including those not individually examined during the investigation;

(ii) 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;

(4) Documentation establishing:

(i) 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;

(ii) The volume of that and subsequent shipments; and

(iii) The date of the first sale to an unaffiliated customer in the United States; and

(5) 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)(4)(i) 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 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) *No shipments.* The Secretary may rescind a new shipper review, in whole or in part, if the Secretary concludes that:

(i) There have been no entries, exports, or sales, as appropriate, during the normal period of review referred to in paragraph (g) of this section; and

(ii) An expansion of the normal period of review to include entries, exports, or sales 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.* 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:

(i) 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

(ii) 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.

(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

(3) Where the requesting party agrees in writing to waive the time limits of paragraph (i) of this section, conduct concurrent reviews, in which case all other provisions of this section will continue to apply with respect to the exporter or producer.

(k) *Expedited reviews in countervailing duty proceedings for noninvestigated exporters. (1) Request for review.* If, in a countervailing duty investigation, the Secretary limited the number of exporters or producers to be individually examined under section 777A(e)(2)(A) of the Act, an exporter that was not selected for individual examination by the Secretary or that

was not accepted as a voluntary respondent (see § 351.204(d)) may request a review under this section. A request must be accompanied by a certification that:

(i) The requester exported the subject merchandise to the United States during the period of investigation; and

(ii) The requester is not affiliated with an exporter or producer that was individually examined in the investigation.

(2) *Deadline for requesting review.* An exporter must submit a request for a review under paragraph (k)(1) of this section within 30 days of the date of publication in the Federal Register of the countervailing duty order.

(3) *Conduct of review.* The Secretary will initiate and conduct a review in accordance with the provisions of this section applicable to new shipper reviews, except that the Secretary will not permit the posting of a bond or security in lieu of a cash deposit under paragraph (e) of this section.

§ 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 deposit of estimated antidumping duties required under section 736(a)(3) of the Act; and

(2) Will initiate an expedited antidumping review. Before making such a determination, the Secretary will make business proprietary information available, and will provide interested parties with an opportunity to file written comments, in accordance with section 736(c)(4) of the Act.

(c) *Procedures.* The Secretary will conduct an expedited antidumping review under this section in accordance with § 351.221.

§ 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.

(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 735(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.

§ 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 benefits 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.* 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). The Secretary may publish a notice of initiation at an earlier date 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.

(d) *Conduct of review.* Upon receipt of responses to the notice of initiation that the Secretary deems adequate to conduct a sunset review, the Secretary will conduct a sunset review in accordance with § 351.221.

(e) *Time limits.* (1) *In general.* Unless the review has been completed under section 751(c)(3) of the Act (no or inadequate response) or, under section 751(c)(4)(B) of the Act, all respondent interested parties waived their participation in the Secretary's sunset review, the Secretary will issue final results of review within 240 days after the date on which the review was initiated. If the Secretary concludes that the sunset review is extraordinarily complicated (see section 751(c)(5)(C) of the Act), the Secretary may extend the period for issuing final results by not more than 90 days.

(2) *Transition orders.* The time limits described in paragraph (e)(1) of this section will not apply to a sunset review of a transition order (see section 751(c)(6) of the Act).

§ 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 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 (i) requests for section 753 investigations by a domestic interested party; and (ii) 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:

(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 and the final results of review a description of any action the Secretary proposed based on the preliminary or final results; and

(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.

(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 the review will contain a request for the information described in section 751(c)(2) of the Act; 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:

(i) Will 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 counter vailable 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 have 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) The Secretary may revoke an antidumping order or terminate a suspended antidumping investigation if the Secretary concludes that:

(i) 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) It is not likely that those persons will in the future sell the subject merchandise at less than normal value.

(2) The Secretary may revoke an antidumping order in part if the Secretary concludes that:

(i) One or more exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years;

(ii) It is not likely that those persons will in the future sell the subject merchandise at less than normal value; and

(iii) For any exporter or producer that the Secretary previously has determined to have sold the subject merchandise at less than normal value, the exporter or producer agrees in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value.

(c) *Revocation or termination based on absence of countervailable subsidy.* (1) The Secretary may revoke a countervailing duty order or terminate a suspended countervailing duty investigation if the Secretary concludes that:

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

(ii) It is not likely that the government of the affected country will in the future reinstate for the subject merchandise those programs or substitute other countervailable programs; and

(iii) Exporters and producers of the subject merchandise are not continuing to receive any net countervailable subsidy from an abolished program referred to in paragraph (c)(1)(i) of this section.

(2) The Secretary may revoke a countervailing duty order or terminate a suspended countervailing duty investigation if the Secretary concludes that:

(i) 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

(ii) It is not likely that those persons will in the future apply for or receive any net countervailable subsidy on the subject merchandise from those programs the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs.

(3) The Secretary may revoke a countervailing duty order in part if the Secretary concludes that:

(i) One or more exporters or producers covered by the order have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years;

(ii) It is not likely that those persons will in the future apply for or receive any net countervailable subsidy on the subject merchandise from those programs the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs; and

(iii) Except for exporters or producers that the Secretary previously has determined have not received any net countervailable subsidy on the subject merchandise, the exporters or producers agree in writing to their immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, has received any net countervailable subsidy on the subject merchandise.

(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 (government abolition of countervailable subsidy programs), before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in commercial quantities of the subject merchandise to which a revocation or termination will apply.

(2) *Intervening year.* ''Intervening year'' means:

(i) The second year if revocation or termination is conditioned on three consecutive years of no sales at less than normal value or countervailable subsidies; or

(ii) The second, third, or fourth year if revocation or termination is conditioned on five consecutive years of no countervailable subsidies.

(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, an exporter or producer may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (b) of this section with regard to that person if the person submits with the request:

(i) The person's certification that the person 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 the person will not sell the merchandise at less than normal value;

(ii) The person's certification that, during each of the three consecutive years referred to in paragraph (b) of this section, the person sold the subject merchandise to the United States in commercial quantities; and

(iii) If applicable, the agreement regarding reinstatement in the order or suspended investigation described in paragraph (b)(2)(iii) of this section.

(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 five consecutive years referred to in paragraph (c)(2) of this section, that person sold the subject merchandise to the United States in commercial quantities; or

(iii) During the fifth and subsequent annual anniversary months of the publication of a countervailing duty order, an exporter or producer may request in writing that the Secretary revoke the order with regard to that person if the person submits with the request:

(A) A certification that the person has 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)(3)(i) of this section), including calculations demonstrating the basis for the conclusion that the person received zero or de minimis net countervailable subsidies during the review period of the administrative review in connection with which the person has submitted the request for revocation;

(B) A certification that the person 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)(3)(ii) of this section);

(C) The person's certification that, during each of the five consecutive years referred to in paragraph (c)(3) of this section, the person sold the subject merchandise to the United States in commercial quantities; and

(D) The agreement described in paragraph (c)(3)(iii) of this section (reinstatement in order).

(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) 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 (in part)'' 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 (in Part)'' 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 (in Part)'' or ''Termination of Suspended Investigation'' (whichever is applicable).

(3) If the Secretary revokes an order in whole or in part, 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, 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 Suspended Investigation'' (whichever is applicable);

(vi) Include in the final results of review, under § 351.221(b)(5), the Secretary's final decision whether changed circumstances warrant revocation or termination; and

(vii) If the Secretary determines that changed circumstances warrant revocation or termination, publish with the notice of final results of review, under § 351.221(b)(5), notice of ''Revocation of Order (in Part)'' or ''Termination of Suspended Investigation'' (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 revocation 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 Commission determines in a changed circumstances review under section 751(b)(2) of the Act that the revocation of an order or termination of a suspended investigation is not likely to lead to continuation or recurrence of material injury, the Secretary will revoke, in whole or in part, the order or terminate the suspended investigation, and will publish in the Federal Register notice of ''Revocation of Order (in Part)'' or ''Termination of Suspended Investigation'' (whichever is applicable).

(i) *Revocation or termination based on sunset review. (1) In general.* In the case of a sunset review under § 351.218, the Secretary will revoke an order or terminate a suspended investigation, unless:

(i) The Secretary makes a determination that revocation or termination would be likely to lead to continuation or recurrence of a countervailable subsidy or dumping (see section 752(b) and section 752(c) of the Act); and

(ii) The Commission makes a determination that revocation or termination would be likely to lead to continuation or recurrence of material injury (see section 752(a) of the Act).

(2) *Exception for transition orders.* Before January 1, 2000, the Secretary will not revoke a transition order (see section 751(c)(6) of the Act) as the result of a sunset review under § 351.218.

(j) *Revocation of countervailing duty order based on Commission negative determination under section 753 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), the Secretary will revoke the countervailing duty order in question, 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.

(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 URAA (implementation of WTO dispute settlement).

(m) *Transition rule.* In the case of time periods that, under section 291(a)(2) of the URAA, are subject to review under the provisions of the Act prior to its amendment by the URAA, and for purposes of determining whether the three- or five-year requirements of paragraphs (b) and (c) of this section are satisfied, the following rules will apply:

(1) *Antidumping proceedings.* The Secretary will consider sales at not less than foreign market value to be equivalent to sales at not less than normal value.

(2) *Countervailing duty proceedings.* The Secretary will consider the absence of a subsidy, as defined in section 771(5) of the Act prior to its amendment by the URAA, to be equivalent to the absence of a countervailable subsidy, as defined in section 771(5) of the Act, as amended by the URAA.

(n) *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 manufactured or exported by the manufacturer or exporter of the component part and 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.

(d) *Notice of Determination.* The Secretary will publish in the Federal Register notice of each affirmative or negative ''monitoring'' determination made under 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 calculation 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 the public announcement of, or, if there is no public announcement, within five days after the date of publication of, the preliminary 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. The Secretary will not consider comments concerning ministerial errors made in the preliminary results of a review.

(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 section 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, or, if there is no 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 ruling.

(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 rulings, procedures 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 Secretary will initiate an inquiry, and will notify all parties on the Department's scope service list of its initiation of a scope inquiry.

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

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

(2) 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:

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

(ii) Citations to any applicable statutory authority, and

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

(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 interested parties 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 of 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 will apply the major input rule 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.

(l) *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 entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of the preliminary scope ruling. 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 entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of the final scope ruling. 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 parties on the Department's scope service list. For purposes of this section, the ''scope service list'' will include all parties 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 parties 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.* The Department obtains most of its factual information in antidumping and countervailing duty proceedings from submissions made by interested parties during the course of the proceeding. This section sets forth the time limits for submitting such factual information, including information in questionnaire responses, publicly available information to value factors in nonmarket economy cases, allegations concerning market viability, allegations of sales at prices below the cost of production, countervailable subsidy allegations, and upstream subsidy allegations. Section 351.302 sets forth the procedures for requesting an extension of such time limits. Section 351.303 contains the procedural rules regarding filing, format, translation, service, and certification of documents.

(b) *Time limits in general.* Except as provided in paragraphs (c) and (d) of this section and § 351.302, a submission of factual information is due no later than:

(1) For a final determination in a countervailing duty investigation or an antidumping investigation, seven days before the date on which the verification of any person is scheduled to commence, except that factual information requested by the verifying officials from a person will be due no later than seven days after the date on which the verification of that person is completed;

(2) For the final results of an administrative review, 140 days after the last day of the anniversary month, except that factual information requested by the verifying officials from a person will be due no later than seven days after the date on which the verification of that person is completed;

(3) For the final results of a changed circumstances review, sunset review, or section 762 review, 140 days after the date of publication of notice of initiation of the review, except that factual information requested by the verifying officials from a person will be due no later than seven days after the date on which the verification of that person is completed;

(4) For the final results of a new shipper review, 100 days after the date of publication of notice of initiation of the review, except that factual

information requested by the verifying officials from a person will be due no later than seven days after the date on which the verification of that person is completed; and

(5) For the final results of an expedited antidumping review, Article 8 violation review, Article 4/Article 7 review, or section 753 review, a date specified by the Secretary.

(c) *Time limits for certain submissions.* (1) *Rebuttal, clarification, or correction of factual information.* Any interested party may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party at any time prior to the deadline provided in this section for submission of such factual information or, if later, 10 days after the date such factual information is served on the interested party or, if appropriate, made available under APO to the authorized applicant.

(2) *Questionnaire responses and other submissions on request.* (i) Notwithstanding paragraph (b) of this section, the Secretary may request any person to submit factual information at any time during a proceeding.

(ii) In the Secretary's written request to an interested party for a response to a questionnaire or for other factual information, the Secretary will specify: the time limit for 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 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.

(iii) Interested parties will have at least 30 days from the date of receipt to respond to the full initial questionnaire. The time limit for response to individual sections of the questionnaire, if the Secretary requests a separate response to such sections, may be less than the 30 days allotted for response to the full questionnaire. The date of receipt will be seven days from the date on which the initial questionnaire was transmitted.

(iv) A notification by an interested party, under section 782(c)(1) of the Act, of difficulties in submitting information in response to a questionnaire issued by the Secretary is due within 14 days after the date of receipt of the initial questionnaire.

(v) A respondent interested party may request in writing that the Secretary conduct a questionnaire presentation. The Secretary may conduct a questionnaire presentation if the Secretary notifies the government of the affected country and that government does not object.

(3) *Submission of publicly available information to value factors under § 351.408(c).* Notwithstanding paragraph (b) of this section, interested parties may submit publicly available information to value factors under § 351.408(c) within:

(i) For a final determination in an antidumping investigation, 40 days after the date of publication of the preliminary determination;

(ii) For the final results of an administrative review, new shipper review, or changed circumstances review, 20 days after the date of publication of the preliminary results of review; and

(iii) For the final results of an expedited antidumping review, a date specified by the Secretary.

(d) *Time limits for certain allegations.* (1) *Market viability and the basis for determining a price-based normal value.* In an antidumping investigation or administrative review, allegations regarding market viability, including the exceptions in § 351.404(c)(2), are due, with all supporting factual information, within 40 days after the date on which the initial questionnaire was transmitted, unless the Secretary alters this time limit.

(2) *Sales at prices below the cost of production.* An allegation of sales at prices below the cost of production made by the petitioner or other domestic interested party is due within:

(i) In an antidumping investigation,

(A) On a country-wide basis, 20 days after the date on which the initial questionnaire was transmitted to any person, unless the Secretary alters this time limit; or

(B) On a company-specific basis, 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limit;

(ii) In an administrative review, new shipper review, or changed circumstances review, on a company-specific basis, 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limit; or

(iii) In an expedited antidumping review, on a company-specific basis, 10 days after the date of publication of the notice of initiation of the review.

(3) *Countervailable subsidy; upstream subsidy.* (i) *In general.* A countervailable subsidy allegation made by the petitioner or other domestic interested party is due no later than:

(A) In a countervailing duty investigation, 40 days before the scheduled date of the preliminary determination; or

(B) In an administrative review, new shipper review, or changed circumstances review, 20 days after all responses to the initial questionnaire are filed with the Department, unless the Secretary alters this time limit.

(ii) *Exception for upstream subsidy allegation in an investigation.* In a countervailing duty investigation, an allegation of upstream subsidies made by the petitioner or other domestic interested party is due no later than:

(A) 10 days before the scheduled date of the preliminary determination; or

(B) 15 days before the scheduled date of the final determination.

(4) *Targeted dumping.* In an antidumping investigation, an allegation of targeted dumping made by the petitioner or other domestic interested party under § 351.414(f)(3) is due no later than 30 days before the scheduled date of the preliminary determination.

§ 351.302 Extension of time limits; return of untimely filed or unsolicited material.

(a) *Introduction.* This section sets forth the procedures for requesting an extension of a time limit. In addition, this section explains that certain untimely filed or unsolicited material will be returned to the submitter together with an explanation of the reasons for the return of such material.

(b) *Extension of time limits.* Unless expressly precluded by statute, the Secretary may, for good cause, extend any time limit established by this Part.

(c) *Requests for extension of specific time limit.* Before the applicable time limit specified under § 351.301 expires, a party may request an extension pursuant to paragraph (b) of this section. The request must be in writing and state the reasons for the request. An extension must be approved in writing.

(d) *Return of untimely filed or unsolicited material.* (1) Unless the Secretary extends a time limit under paragraph (b) of this section, the Secretary will not consider or retain in the official record of the proceeding:

(i) Untimely filed factual information, written argument, or other material that the Secretary returns to the submitter, except as provided under § 351.104(a)(2); or

(ii) Unsolicited questionnaire responses, except as provided under § 351.204(d)(2).

(2) The Secretary will return such information, argument, or other

material, or unsolicited questionnaire response with, to the extent practicable, written notice stating the reasons for return.

§ 351.303 Filing, format, translation, service, and certification of documents.

(a) *Introduction.* This section contains the procedural rules regarding filing, format, service, translation, and certification of documents and applies to all persons submitting documents to the Department for consideration in an antidumping or countervailing duty proceeding.

(b) *Where to file; time of filing.* Persons must address and submit all documents to the Department with the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, between the hours of 8:30 a.m. and 5:00 p.m. on business days (see § 351.103(b)). If the applicable time limit expires on a non-business day, the Secretary will accept documents that are filed on the next business day.

(c) *Number of copies; filing of business proprietary and public versions under the one-day lag rule; information in double brackets.* (1) *In general.* Except as provided in paragraphs (c)(2) and (c)(3) of this section, a person must file six copies of each submission with the Department.

(2) *Application of the one-day lag rule.* (i) *Filing the business proprietary version.* A person must file one copy of the business proprietary version of any document with the Department within the applicable time limit. Business proprietary version means the version of a document containing information for which a person claims business proprietary treatment under § 351.304.

(ii) *Filing the final business proprietary version; bracketing corrections.* By the close of business one business day after the date the business proprietary version is filed under paragraph (c)(2)(i) of this section, a person must file six copies of the final business proprietary version of the document with the Department. The final business proprietary version must be identical to the business proprietary version filed on the previous day except for any bracketing corrections. Although a person must file six copies of the complete final business proprietary version with the Department, the person may serve other persons with only those pages containing bracketing corrections.

(iii) *Filing the public version.* Simultaneously with the filing of the final business proprietary version under paragraph (c)(2)(ii) of this section, a person also must file three copies of the public version of such document (see § 351.304(c)) with the Department.

(iv) *Information in double brackets.* If a person serves authorized applicants with a business proprietary version of a document that excludes information in double brackets pursuant to § 351.304(b)(2), the person simultaneously must file with the Department one copy of those pages in which information in double brackets has been excluded.

(3) *Computer media and printouts.* The Secretary may require submission of factual information on computer media unless the Secretary modifies such requirements under section 782(c) of the Act (see § 351.301(c)(2)(iv)). The computer medium must be accompanied by the number of copies of any computer printout specified by the Secretary. All information on computer media must be releasable under APO (see § 351.305).

(d) *Format of copies.* (1) *In general.* Unless the Secretary alters the requirements of this section, documents filed with the Department must conform to the specification and marking requirements under paragraph (d)(2) of this section or the Secretary may refuse to accept such documents for the official record of the proceeding.

(2) *Specifications and markings.* A person must submit documents on letter-size paper, single-sided and double-spaced, and must securely bind each copy as a single document with any letter of transmittal as the first page of the document. A submitter must mark the first page of each document in the upper right-hand corner with the following information in the following format:

(i) On the first line, except for a petition, indicate the Department case number;

(ii) On the second line, indicate the total number of pages in the document including cover pages, appendices, and any unnumbered pages;

(iii) On the third line, indicate whether the document is for an investigation, scope inquiry, downstream product monitoring application, or review and, if the latter, indicate the inclusive dates of the review, the type of review, and the section number of the Act corresponding to the type of review;

(iv) On the fourth line, indicate the Department office conducting the proceeding;

(v) On the fifth and subsequent lines, indicate whether any portion of the document contains business proprietary information and, if so, list the applicable page numbers and state either ''Document May be Released Under APO'' or ''Document May Not be Released Under APO.'' The top of each page containing the business proprietary information must state ''Business Proprietary Treatment Requested'' and the warning ''Bracketing of Business Proprietary Information is Not Final for One Business Day After Date of Filing'' (see § 351.303(c)(2) and § 351.304(c)); and

(vi) For public versions of business proprietary documents required under § 351.304(c), complete the marking as required in paragraphs (d)(2)(i)–(v) of this section for the business proprietary document, but conspicuously mark the first page ''Public Version.''

(e) *Translation to English.* A document submitted in a foreign language must be accompanied by an English translation, unless the Secretary waives this requirement for an individual document.

(f) *Service of copies on other persons.* (1) *In general.* Except as provided in § 351.202(c) (filing of petition), § 351.207(f)(1) (submission of proposed suspension agreement), and paragraph (f)(3) of this section, a person filing a document with the Department simultaneously must serve a copy of the document on all other persons on the service list by personal service or first class mail.

(2) *Certificate of service.* Each document filed with the Department must include a certificate of service listing each person served (including agents), the type of document served, and the date and method of service on each person. The Secretary may refuse to accept any document that is not accompanied by a certificate of service.

(3) *Service requirements for certain documents.* (i) *Briefs.* In addition to the certificate of service requirements contained in paragraph (f)(2) of this section, a person filing a case or rebuttal brief with the Department simultaneously must serve a copy of that brief on all persons on the service list and on any U.S. Government agency that has submitted a case or rebuttal brief in the segment of the proceeding. If, under § 351.103(c), a person has designated an agent to receive service that is located in the United States, service on that person must be either by personal service on the same day the brief is filed or by overnight mail or courier on the next day. If the person has designated an agent to receive service that is located outside the United States, service on that person must be by first class airmail.

(ii) *Request for review.* In addition to the certificate of service requirements under paragraph (f)(2) of this section, an

interested party that files with the Department a request for an expedited antidumping review, an administrative review, a new shipper review, or a changed circumstances review, must serve a copy of the request by personal service or first class mail on each exporter or producer specified in the request and on the petitioner by the end of the anniversary month or within ten days of filing the request for review, whichever is later. If the interested party that files the request is unable to locate a particular exporter or producer, or the petitioner, the Secretary may accept the request for review if the Secretary is satisfied that the party made a reasonable attempt to serve a copy of the request on such person.

(g) *Certifications.* A person must file with each submission containing factual information the certification in paragraph (1) below and, in addition, if the person has legal counsel or another representative, the certification in paragraph (2) below:

(1) For the person's official responsible for presentation of the factual information:

I, (name and title), currently employed by (person), certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate.

(2) For the person's legal counsel or other representative:

I, (name), of (law or other firm), counsel or representative to (person), certify that (1) I have read the attached submission, and (2) based on the information made available to me by (person), I have no reason to believe that this submission contains any material misrepresentation or omission of fact.

§ 351.304 Establishing business proprietary treatment of information. [Reserved].

§ 351.305 Access to business proprietary information. [Reserved].

§ 351.306 Use of business proprietary information. [Reserved].

§ 351.307 Verification of information.

(a) *Introduction.* Prior to making a final determination in an investigation or issuing final results of review, the Secretary may verify relevant factual information. This section clarifies when verification will occur, the contents of a verification report, and the procedures for verification.

(b) *In general.* (1) Subject to paragraph (b)(4) of this section, the Secretary will verify factual information upon which the Secretary relies in:

(i) A final determination in a continuation of a previously suspended countervailing duty investigation (section 704(g) of the Act), countervailing duty investigation, continuation of a previously suspended antidumping investigation (section 705(a) of the Act), or antidumping investigation;

(ii) The final results of an expedited antidumping review;

(iii) A revocation under section 751(d) of the Act;

(iv) The final results of an administrative review, new shipper review, or changed circumstances review, if the Secretary decides that good cause for verification exists; and

(v) The final results of an administrative review if:

(A) A domestic interested party, not later than 100 days after the date of publication of the notice of initiation of review, submits a written request for verification; and

(B) The Secretary conducted no verification under this paragraph during either of the two immediately preceding administrative reviews.

(2) The Secretary may verify factual information upon which the Secretary relies in a proceeding or a segment of a proceeding not specifically provided for in paragraph (b)(1) of this section.

(3) If the Secretary decides that, because of the large number of exporters or producers included in an investigation or administrative review, it is impractical to verify relevant factual information for each person, the Secretary may select and verify a sample.

(4) The Secretary may conduct verification of a person if that person agrees to verification and the Secretary notifies the government of the affected country and that government does not object. If the person or the government objects to verification, the Secretary will not conduct verification and may disregard any or all information submitted by the person in favor of use of the facts available under section 776 of the Act and § 351.308.

(c) *Verification report.* The Secretary will report the methods, procedures, and results of a verification under this section prior to making a final determination in an investigation or issuing final results in a review.

(d) *Procedures for verification.* The Secretary will notify the government of the affected country that employees of the Department will visit with the persons listed below in order to verify the accuracy and completeness of submitted factual information. The notification will, where practicable, identify any member of the verification team who is not an officer of the U.S. Government. As part of the verification, employees of the Department will request access to all files, records, and personnel which the Secretary considers relevant to factual information submitted of:

(1) Producers, exporters, or importers;

(2) Persons affiliated with the persons listed in paragraph (d)(1) of this section, where applicable;

(3) Unaffiliated purchasers, or

(4) The government of the affected country as part of verification in a countervailing duty proceeding.

§ 351.308 Determinations on the basis of the facts available.

(a) *Introduction.* The Secretary may make determinations on the basis of the facts available whenever necessary information is not available on the record, an interested party or any other person withholds or fails to provide information requested in a timely manner and in the form required or significantly impedes a proceeding, or the Secretary is unable to verify submitted information. If the Secretary finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Secretary may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. This section lists some of the sources of information upon which the Secretary may base an adverse inference and explains the actions the Secretary will take with respect to corroboration of information.

(b) *In general.* The Secretary may make a determination under the Act and this Part based on the facts otherwise available in accordance with section 776(a) of the Act.

(c) *Adverse Inferences.* For purposes of section 776(b) of the Act, an adverse inference may include reliance on:

(1) Secondary information, such as information derived from:

(i) The petition;

(ii) A final determination in a countervailing duty investigation or an antidumping investigation;

(iii) Any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or

(2) Any other information placed on the record.

(d) *Corroboration of secondary information.* Under section 776(c) of the Act, when the Secretary relies on secondary information, the Secretary will, to the extent practicable, corroborate that information from independent sources that are reasonably at the Secretary's disposal. Independent sources may include, but are not limited to, published price lists, official import statistics and customs data, and

information obtained from interested parties during the instant investigation or review. Corroborate means that the Secretary will examine whether the secondary information to be used has probative value. The fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate.

(e) *Use of certain information.* In reaching a determination under the Act and this Part, the Secretary will not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the Secretary if the conditions listed under section 782(e) of the Act are met.

§ 351.309 Written argument.

(a) *Introduction.* Written argument may be submitted during the course of an antidumping or countervailing duty proceeding. This section sets forth the time limits for submission of case and rebuttal briefs and provides guidance on what should be contained in these documents.

(b) *Written argument.* (1) *In general.* In making the final determination in a countervailing duty investigation or antidumping investigation or the final results of an administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review, the Secretary will consider written arguments in case or rebuttal briefs filed within the time limits in this section.

(2) *Written argument on request.* Notwithstanding paragraph (b)(1) of this section, the Secretary may request written argument on any issue from any person or U.S. Government agency at any time during a proceeding.

(c) *Case brief.* (1) Any interested party or U.S. Government agency may submit a ''case brief'' within:

(i) For a final determination in a countervailing duty investigation or antidumping investigation, 50 days after the date of publication of the preliminary determination, unless the Secretary alters this time limit;

(ii) For the final results of an administrative review, new shipper review, changed circumstances review, or section 762 review, 30 days after the date of publication of the preliminary results of review, unless the Secretary alters the time limit; or

(iii) For the final results of an expedited antidumping review, sunset review, Article 8 violation review, Article 4/Article 7 review, or section 753 review, a date specified by the Secretary.

(2) The case brief must present all arguments that continue in the submitter's view to be relevant to the Secretary's final determination or final results, including any arguments presented before the date of publication of the preliminary determination or preliminary results. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages.

(d) *Rebuttal brief.* (1) Any interested party or U.S. Government agency may submit a ''rebuttal brief'' within five days after the time limit for filing the case brief, unless the Secretary alters this time limit.

(2) The rebuttal brief may respond only to arguments raised in case briefs and should identify the arguments to which it is responding. As part of the rebuttal brief, parties are encouraged to provide a summary of the arguments not to exceed five pages.

§ 351.310 Hearings.

(a) *Introduction.* This section sets forth the procedures for requesting a hearing, indicates that the Secretary may consolidate hearings, and explains when the Secretary may hold closed hearing sessions.

(b) *Pre-hearing conference.* The Secretary may conduct a telephone pre-hearing conference with representatives of interested parties to facilitate the conduct of the hearing.

(c) *Request for hearing.* Any interested party may request that the Secretary hold a public hearing on arguments to be raised in case or rebuttal briefs within 30 days after the date of publication of the preliminary determination or preliminary results of review, unless the Secretary alters this time limit, or in a proceeding where the Secretary will not issue a preliminary determination, not later than a date specified by the Secretary. To the extent practicable, a party requesting a hearing must identify arguments to be raised at the hearing. At the hearing, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief.

(d) *Hearings in general.* (1) If an interested party submits a request under paragraph (c) of this section, the Secretary will hold a public hearing on the date stated in the notice of the Secretary's preliminary determination or preliminary results of administrative review (or otherwise specified by the Secretary in an expedited antidumping review), unless the Secretary alters the date. Ordinarily, the hearing will be held two days after the scheduled date for submission of rebuttal briefs.

(2) The hearing is not subject to 5 U.S.C. 551–559, and 702 (Administrative Procedure Act). Witness testimony, if any, will not be under oath or subject to cross-examination by another interested party or witness. During the hearing, the chair may question any person or witness and may request persons to present additional written argument.

(e) *Consolidated hearings.* At the Secretary's discretion, the Secretary may consolidate hearings in two or more cases.

(f) *Closed hearing sessions.* An interested party may request a closed session of the hearing no later than the date the case briefs are due in order to address limited issues during the course of the hearing. The requesting party must identify the subjects to be discussed, specify the amount of time requested, and justify the need for a closed session with respect to each subject. If the Secretary approves the request for a closed session, only authorized applicants and other persons authorized by the regulations may be present for the closed session (see § 351.305).

(g) *Transcript of hearing.* The Secretary will place a verbatim transcript of the hearing in the public and official records of the proceeding and will announce at the hearing how interested parties may obtain copies of the transcript.

§ 351.311 Countervailable subsidy practice discovered during investigation or review.

(a) *Introduction.* During the course of a countervailing duty investigation or review, Department officials may discover or receive notice of a practice that appears to provide a countervailable subsidy. This section explains when the Secretary will examine such a practice.

(b) *Inclusion in proceeding.* If during a countervailing duty investigation or a countervailing duty administrative review the Secretary discovers a practice that appears to provide a countervailable subsidy with respect to the subject merchandise and the practice was not alleged or examined in the proceeding, or if, pursuant to section 775 of the Act, the Secretary receives notice from the United States Trade Representative that a subsidy or subsidy program is in violation of Article 8 of the Subsidies Agreement, the Secretary will examine the practice, subsidy, or subsidy program if the Secretary concludes that sufficient time remains before the scheduled date for the final determination or final results of review.

(c) *Deferral of examination.* If the Secretary concludes that insufficient time remains before the scheduled date for the final determination or final results of review to examine the practice, subsidy, or subsidy program described in paragraph (b) of this section, the Secretary will:

(1) During an investigation, allow the petitioner to withdraw the petition without prejudice and resubmit it with an allegation with regard to the newly discovered practice, subsidy, or subsidy program; or

(2) During an investigation or review, defer consideration of the newly discovered practice, subsidy, or subsidy program until a subsequent administrative review, if any.

(d) *Notice.* The Secretary will notify the parties to the proceeding of any practice the Secretary discovers, or any subsidy or subsidy program with respect to which the Secretary receives notice from the United States Trade Representative, and whether or not it will be included in the then ongoing proceeding.

§ 351.312 Industrial users and consumer organizations.

(a) *Introduction.* The URAA provides for opportunity for comment by consumer organizations and industrial users on matters relevant to a particular determination of dumping, subsidization, or injury. This section indicates under what circumstances such persons may submit relevant information and argument.

(b) *Opportunity to submit relevant information and argument.* In an antidumping or countervailing duty proceeding under title VII of the Act and this Part, an industrial user of the subject merchandise or a representative consumer organization, as described in section 777(h) of the Act, may submit relevant factual information and written argument to the Department under § 351.301(b) and paragraphs (c) and (d) of § 351.309 concerning dumping or a countervailable subsidy. All such submissions must be filed in accordance with § 351.303.

(c) *Business proprietary information.* Persons described in paragraph (b) of this section may request business proprietary treatment of information under § 351.304, but will not be granted access under § 351.305 to business proprietary information submitted by other persons.

Subpart D—Calculation of Export Price, Constructed Export Price, Fair Value, and Normal Value

§ 351.401 In general.

(a) *Introduction.* In general terms, an antidumping analysis involves a comparison of export price or constructed export price in the United States with normal value in the foreign market. This section establishes certain general rules that apply to the calculation of export price, constructed export price and normal value. (See section 772, section 773, and section 773A of the Act).

(b) *Adjustments in general.* In making adjustments to export price, constructed export price, or normal value, the Secretary will adhere to the following principles:

(1) Any interested party that claims an adjustment must establish the claim to the satisfaction of the Secretary.

(2) The Secretary will not double-count adjustments.

(c) *Discounts, rebates, and other price adjustments.* In calculating export price, constructed export price, and normal value (where normal value is based on price), the Secretary will rely upon a price net of any discounts, rebates, or post-sale adjustments to price that are reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable).

(d) *Delayed payment or pre-payment of expenses.* Where cost is the basis for determining the amount of an adjustment to export price, constructed export price, or normal value, the Secretary will not factor in any delayed payment or pre-payment of expenses by the exporter or producer.

(e) *Adjustments for movement expenses.* In making adjustments for movement expenses to export price or constructed export price under section 772(c)(2)(A) of the Act, or to normal value under section 773(a)(6)(B)(ii) of the Act:

(1) The Secretary may adjust for warehousing expenses; and

(2) The ''original place of shipment'' means the original place from which the seller shipped the goods.

(f) *Treatment of affiliated producers in antidumping proceedings.* In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:

(1) The level of common ownership;

(2) Whether managerial employees or board members of one of the affiliated producers sit on the board of directors of the other affiliated person; and

(3) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

(g) *Allocation of expenses.* The Secretary may consider allocated expenses when transaction-specific reporting is not feasible, provided the Secretary is satisfied that the allocation method used does not cause inaccuracies or distortions.

(h) *Treatment of subcontractors (''tolling'' operations).* The Secretary will not consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor does not acquire ownership, and does not control the relevant sale of the subject merchandise or foreign like product.

(i) *Date of sale.* In identifying the date of a sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business.

§ 351.402 Calculation of export price and constructed export price; reimbursement of antidumping and countervailing duties.

(a) *Introduction.* In order to establish export price, constructed export price, and normal value, the Secretary must make certain adjustments to the price to the unaffiliated purchaser (often called the ''starting price'') in both the United States and foreign markets. This regulation clarifies how the Secretary will make certain of the adjustments to the starting price in the United States that are required by section 772 of the Act.

(b) *Additional adjustments to constructed export price.* The Secretary will make adjustments to constructed export price under section 772(d) of the Act for expenses associated with commercial activities in the United States, no matter where incurred.

(c) *Special rule for merchandise with value added after importation.* (1) *Merchandise imported by affiliated persons.* In applying section 772(e) of the Act, merchandise imported by and value added by a person affiliated with the exporter or producer includes

merchandise imported and value added for the account of such an affiliated person.

(2) *Estimation of value added.* The Secretary normally will determine that the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise if the Secretary estimates the value added to be at least 60 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States. The Secretary normally will estimate the value added based on the difference between the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the price paid for the subject merchandise by the affiliated person. The Secretary normally will base this determination on averages of the prices and the value added to the subject merchandise.

(3) *Determining dumping margins.* For purposes of determining dumping margins under paragraphs (1) and (2) of section 772(e) of the Act, the Secretary may use the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons.

(d) *Special rule for determining profit.* This paragraph sets forth rules for calculating profit in establishing constructed export price under section 772(f) of the Act.

(1) *Basis for total expenses and total actual profit.* In calculating total expenses and total actual profit, the Secretary normally will use the aggregate of expenses and profit for all subject merchandise sold in the United States and all foreign like products sold in the exporting country, including sales that have been disregarded as being below the cost of production. (See section 773(b) of the Act).

(2) *Use of financial reports.* For purposes of determining profit under section 772(d)(3) of the Act, the Secretary may rely on any appropriate financial reports, including public, audited financial statements, or equivalent financial reports, and internal financial reports prepared in the ordinary course of business.

(3) *Voluntary reporting of costs of production.* The Secretary will not require the reporting of costs of production solely for purposes of determining the amount of profit to be deducted from the constructed export price. The Secretary will base the calculation of profit on costs of production if such costs are reported voluntarily by the date established by the Secretary, and provided that it is practicable to do so and the costs of production are verifiable.

(e) *Treatment of payments between affiliated persons.* Where a person affiliated with the exporter or producer incurs any of the expenses deducted from constructed export price under section 772(d) of the Act and is reimbursed for such expenses by the exporter, producer or other affiliate, the Secretary normally will make an adjustment based on the actual cost to the affiliated person. If the Secretary is satisfied that information regarding the actual cost to the affiliated person is unavailable to the exporter or producer, the Secretary may determine the amount of the adjustment on any other reasonable basis, including the amount of the reimbursement to the affiliated person if the Secretary is satisfied that such amount reflects the amount usually paid in the market under consideration.

(f) *Reimbursement of antidumping duties and countervailing duties.* (1) *In general.* (i) In calculating the export price (or the constructed export price), the Secretary will deduct the amount of any antidumping duty or countervailing duty which the exporter or producer:

(A) Paid directly on behalf of the importer; or

(B) Reimbursed to the importer.

(ii) The Secretary will not deduct the amount of any antidumping duty or countervailing duty paid or reimbursed if the exporter or producer granted to the importer before initiation of the antidumping investigation in question a warranty of nonapplicability of antidumping duties or countervailing duties with respect to subject merchandise which was:

(A) Sold before the date of publication of the Secretary's order applicable to the merchandise in question; and

(B) Exported before the date of publication of the Secretary's final antidumping determination. Ordinarily, the Secretary will deduct the amount reimbursed only once in the calculation of the export price (or constructed export price).

(2) *Certificate.* The importer must file prior to liquidation a certificate in the following form with the appropriate District Director of Customs:

> I hereby certify that I (have) (have not) entered into any agreement or understanding for the payment or for the refunding to me, by the manufacturer, producer, seller, or exporter, of all or any part of the antidumping duties or countervailing duties assessed upon the following importations of (commodity) from (country): (List entry numbers) which have been purchased on or after (date of publication of antidumping notice suspending liquidation in the Federal Register) or purchased before (same date) but exported on or after (date of final determination of sales at less than fair value).

(3) *Presumption.* The Secretary may presume from an importer's failure to file the certificate required in paragraph (f)(2) of this section that the exporter or producer paid or reimbursed the antidumping duties or countervailing duties.

§ 351.403. Sales used in calculating normal value; transactions between affiliated parties.

(a) *Introduction.* This section clarifies when the Secretary may use offers for sale in determining normal value. Additionally, this section clarifies the authority of the Secretary to use sales to or through an affiliated party as a basis for normal value. (See section 773(a)(1)(B) and section 773(a)(5) of the Act.)

(b) *Sales and offers for sale.* In calculating normal value, the Secretary normally will consider offers for sale only in the absence of sales and only if the Secretary concludes that acceptance of the offer can be reasonably expected.

(c) *Sales to an affiliated party.* If an exporter or producer sold the foreign like product to an affiliated party, the Secretary may calculate normal value based on that sale only if satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller.

(d) *Sales through an affiliated party.* If an exporter or producer sold the foreign like product through an affiliated party, the Secretary may calculate normal value based on the sale by such affiliated party. (See section 773(a)(5) of the Act.)

§ 351.404 Selection of the market to be used as the basis for normal value.

(a) *Introduction.* Although in most circumstances sales of the foreign like product in the home market are the most appropriate basis for determining normal value, section 773 of the Act also permits use of sales to a third country or constructed value as the basis for normal value. This section clarifies the rules for determining the basis for normal value.

(b) *Determination of viable market.* (1) *In general.* The Secretary will consider the exporting country or a third country as constituting a viable market if the Secretary is satisfied that sales of the foreign like product in that country are of sufficient quantity to form the basis of normal value.

(2) *Sufficient quantity.* ''Sufficient quantity'' normally means that the aggregate quantity (or, if quantity is not

appropriate, value) of the foreign like product sold by an exporter or producer in a country is 5 percent or more of the aggregate quantity (or value) of its sales of the subject merchandise to the United States.

(c) *Calculation of price-based normal value in viable market.* (1) *In general.* Subject to paragraph (c)(2) of this section:

(i) If the exporting country constitutes a viable market, the Secretary will calculate normal value on the basis of price in the exporting country (see section 773(a)(1)(B)(i) of the Act); or

(ii) If the exporting country does not constitute a viable market, but a third country does constitute a viable market, the Secretary may calculate normal value on the basis of price to a third country (see section 773(a)(1)(B)(ii) of the Act).

(2) *Exception.* The Secretary may decline to calculate normal value in a particular market under paragraph (c)(1) of this section if it is established to the satisfaction of the Secretary that:

(i) In the case of the exporting country or a third country, a particular market situation exists that does not permit a proper comparison with the export price or constructed export price (see section 773(a)(1)(B)(ii)(III) or section 773(a)(1)(C)(iii) of the Act; or

(ii) In the case of a third country, the price is not representative (see section 773(a)(1)(B)(ii)(I) of the Act).

(d) *Allegations concerning market viability and the basis for determining a price-based normal value.* In an antidumping investigation or review, allegations regarding market viability or the exceptions in paragraph (c)(2) of this section, must be filed, with all supporting factual information, in accordance with § 351.301(d)(1).

(e) *Selection of third country.* For purposes of calculating normal value based on prices in a third country, where prices in more than one third country satisfy the criteria of section 773(a)(1)(B)(ii) of the Act and this section, the Secretary generally will select the third country based on the following criteria:

(1) The foreign like product exported to a particular third country is more similar to the subject merchandise exported to the United States than is the foreign like product exported to other third countries;

(2) The volume of sales to a particular third country is larger than the volume of sales to other third countries;

(3) Such other factors as the Secretary considers appropriate.

(f) *Third country sales and constructed value.* The Secretary normally will calculate normal value based on sales to a third country rather than on constructed value if adequate information is available and verifiable (see section 773(a)(4) of the Act).

§ 351.405 Calculation of normal value based on constructed value.

(a) *Introduction.* In certain circumstances, the Secretary may determine normal value by constructing a value based on the cost of manufacture, selling general and administrative expenses, and profit. The Secretary may use constructed value as the basis for normal value where: Neither the home market nor a third country market is viable; sales below the cost of production are disregarded; sales outside the ordinary course of trade, or sales the prices of which are otherwise unrepresentative, are disregarded; sales used to establish a fictitious market are disregarded; no contemporaneous sales of comparable merchandise are available; or in other circumstances where the Secretary determines that home market or third country prices are inappropriate. (See section 773(e) and section 773(f) of the Act). This section clarifies the meaning of certain terms relating to constructed value.

(b) *Profit and selling, general, and administrative expenses.* In determining the amount to be added to constructed value for profit and for selling, general, and administrative expenses, the following rules will apply:

(1) Under section 773(e)(2)(A) of the Act, ''foreign country'' means the country in which the merchandise is produced or a third country selected by the Secretary under § 351.404(e), as appropriate.

(2) Under section 773(e)(2)(B) of the Act, ''foreign country'' means the country in which the merchandise is produced.

§ 351.406 Calculation of normal value if sales are made at less than cost of production.

(a) *Introduction.* In determining normal value, the Secretary may disregard sales of the foreign-like product made at prices that are less than the cost of production of that product. However, among other criteria, such sales will be disregarded only if they are made within an extended period of time. (See section 773(b) of the Act.) This section clarifies the meaning of the term ''extended period of time'' as used in the Act.

(b) *Extended period of time.* The ''extended period of time'' under section 773(b)(1)(A) of the Act normally will coincide with the period in which the sales under consideration for the determination of normal value were made.

§ 351.407 Calculation of constructed value and cost of production.

(a) *Introduction.* This section sets forth certain rules that are common to the calculation of constructed value and the cost of production. (See section 773(f) of the Act).

(b) *Allocation of costs.* In determining the appropriate method for allocating costs among products, the Secretary may take into account production quantities, relative sales values, and other quantitative and qualitative factors associated with the manufacture and sale of the subject merchandise and the foreign like product.

(c) *Startup costs.* (1) In identifying startup operations under section 773(f)(1)(C)(ii) of the Act:

(i) ''New production facilities'' includes the substantially complete retooling of an existing plant. Substantially complete retooling involves the replacement of nearly all production machinery or the equivalent rebuilding of existing machinery.

(ii) A ''new product'' is one requiring substantial additional investment, including products which, though sold under an existing nameplate, involve the complete revamping or redesign of the product. Routine model year changes will not be considered a new product.

(iii) Mere improvements to existing products or ongoing improvements to existing facilities will not be considered startup operations.

(iv) An expansion of the capacity of an existing production line will not qualify as a startup operation unless the expansion constitutes such a major undertaking that it requires the construction of a new facility and results in a depression of production levels due to technical factors associated with the initial phase of commercial production of the expanded facilities.

(2) In identifying the end of the startup period under clauses (ii) and (iii) of section 773(f)(1)(C) of the Act:

(i) The attainment of peak production levels will not be the standard for identifying the end of the startup period, because the startup period may end well before a company achieves optimum capacity utilization.

(ii) The startup period will not be extended to cover improvements and cost reductions that may occur over the entire life cycle of a product.

(3) In determining when a producer reaches commercial production levels under section 773(f)(1)(C)(ii) of the Act:

(i) The Secretary will consider the actual production experience of the merchandise in question, measuring production on the basis of units processed.

(ii) To the extent necessary, the Secretary will examine factors in addition to those specified in section 773(f)(1)(C)(ii) of the Act, including historical data reflecting the same producer's or other producers' experiences in producing the same or similar products. A producer's projections of future volume or cost will be accorded little weight.

(4) In making an adjustment for startup operations under section 773(f)(1)(C)(iii) of the Act:

(i) The Secretary will determine the duration of the startup period on a case-by-case basis.

(ii) The difference between actual costs and the costs of production calculated for startup costs will be amortized over a reasonable period of time subsequent to the startup period over the life of the product or machinery, as appropriate.

(iii) The Secretary will consider unit production costs to be items such as depreciation of equipment and plant, labor costs, insurance, rent and lease expenses, material costs, and overhead. The Secretary will not consider sales expenses, such as advertising costs, or other non-production costs, as startup costs.

§ 351.408 Calculation of normal value of merchandise from nonmarket economy countries.

(a) *Introduction.* In identifying dumping from a nonmarket economy country, the Secretary normally will calculate normal value by valuing the nonmarket economy producers' factors of production in a market economy country. (See section 773(c) of the Act.) This section clarifies when and how this special methodology for nonmarket economies will be applied.

(b) *Economic Comparability.* In determining whether a country is at a level of economic development comparable to the nonmarket economy under section 773(c)(2)(B) or section 773(c)(4)(A) of the Act, the Secretary will place primary emphasis on per capita GDP as the measure of economic comparability.

(c) *Valuation of Factors of Production.* For purposes of valuing the factors of production, general expenses, profit, and the cost of containers, coverings, and other expenses (referred to collectively as ''factors'') under section 773(c)(1) of the Act the following rules will apply:

(1) *Information used to value factors.* The Secretary normally will use publicly available information to value factors. However, where a factor is purchased from a market economy producer and paid for in a market economy currency, the Secretary normally will use the price paid to the market economy supplier. In those instances where a portion of the factor is purchased from a market economy source and the remainder from a nonmarket economy producer, the Secretary normally will value the factor using the price paid to the market economy supplier.

(2) *Valuation in a single country.* Except for labor, as provided in paragraph (d)(3) of this section, the Secretary normally will value all factors in a single surrogate country.

(3) *Labor.* For labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries found to be economically comparable to the nonmarket economy country under section 773(c)(4)(A) of the Act. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current data, and will be made available to the public.

(4) *Manufacturing overhead, general expenses, and profit.* For manufacturing overhead, general expenses, and profit, the Secretary normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.

§ 351.409 Differences in quantities.

(a) *Introduction.* Because the quantity of merchandise sold may affect the price, in comparing export price or constructed export price with normal value, the Secretary normally will use sales of comparable quantities of merchandise. Where this is not practicable, the Secretary will make a reasonable allowance for any difference in quantities to the extent the Secretary is satisfied that the amount of any price differential (or lack thereof) is wholly or partly due to that difference in quantities. (See section 773(a)(6)(C)(i) of the Act.) In making the allowance, the Secretary will consider, among other things, the practice of the industry in the relevant country of granting quantity discounts in the ordinary course of trade.

(b) *Sales with quantity discounts in calculating normal value.* The Secretary normally will calculate normal value based on sales with quantity discounts only if:

(1) During the period examined, or during a more representative period, the exporter or producer granted quantity discounts of at least the same magnitude on 20 percent or more of sales of the foreign like product for the relevant country; or

(2) The exporter or producer demonstrates to the Secretary's satisfaction that the discounts reflect savings specifically attributable to the production of the different quantities.

(c) *Sales with quantity discounts in calculating weighted-average normal value.* If the exporter or producer does not satisfy the conditions of paragraph (b) of this section, the Secretary will calculate normal value based on weighted-average prices that include sales at a discount.

(d) *Price lists.* In determining whether a discount has been granted, the existence or lack thereof of a published price list reflecting such a discount will not be controlling. Ordinarily, the Secretary will give weight to a price list only if, in the line of trade and market under consideration, the exporter or producer demonstrates that it has adhered to its price list.

(e) *Relationship to level of trade adjustment.* If adjustments are claimed for both differences in quantities and differences in level of trade, the Secretary will not make an adjustment for differences in quantities unless the Secretary is satisfied that the effect on price comparability of differences in quantities has been identified and established separately from the effect on price comparability of differences in the levels of trade.

§ 351.410 Differences in circumstances of sale.

(a) *Introduction.* In calculating normal value the Secretary may make adjustments to account for certain differences in the circumstances of sales in the United States and foreign markets. (See section 773(a)(6)(C)(iii) of the Act). This section clarifies certain terms used in the statute regarding circumstances of sale adjustments and describes the adjustment when commissions are paid only in one market.

(b) *Direct selling expenses.* Under this section, ''direct selling expenses'' are expenses, such as commissions, credit expenses, guarantees, and warranties, that result from, and bear a direct relationship to, the particular sale in question.

(c) *Assumed expenses.* Assumed expenses are selling expenses that are assumed by the seller on behalf of the buyer, such as advertising expenses.

(d) *Reasonable allowance.* In deciding what is a reasonable allowance for any difference in circumstances of sale, the Secretary normally will consider the cost of such difference to the exporter or producer but, if appropriate, may also consider the effect of such difference on the market value of the merchandise.

(e) *Commissions paid in one market.* The Secretary normally will make a reasonable allowance for other selling expenses if the Secretary makes a reasonable allowance for commissions in one of the markets under consideration, and no commission is paid in the other market under consideration. The Secretary will limit the amount of such allowance to the amount of the other selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

§ 351.411 Differences in physical characteristics.

(a) *Introduction.* In comparing United States sales with foreign market sales, the Secretary may determine that the merchandise sold in the United States does not have the same physical characteristics as the merchandise sold in the foreign market, and that the difference has an effect on prices. In calculating normal value, the Secretary will make a reasonable allowance for such differences. (See section 773(a)(6)(C)(ii) of the Act).

(b) *Reasonable allowance.* In deciding what is a reasonable allowance for differences in physical characteristics, the Secretary will consider only differences in variable costs associated with the physical differences. Where appropriate, the Secretary may also consider differences in the market value. The Secretary will not consider differences in cost of production when compared merchandise has identical physical characteristics.

§ 351.412 Levels of trade; adjustment for differences in level of trade; constructed export price offset.

(a) *Introduction.* In comparing United States sales with foreign market sales the Secretary may determine that sales in the two markets were not made at the same level of trade, and that the difference has an effect on the comparability of the prices. The Secretary is authorized to adjust normal value to account for such a difference. (See section 773(a)(7) of the Act).

(b) *Identifying levels of trade and differences in levels of trade.* In identifying the sales to be used in calculating normal value (see section 773(a)(1)(B) of the Act), and in making an adjustment for differences in level of trade or a constructed export price offset (see section 773(a)(7) of the Act), the Secretary will identify the level of trade as follows:

(1) In the case of export price and normal value, the Secretary will identify the level of trade based on the starting price;

(2) In the case of constructed export price, the Secretary will identify the level of trade based on the price after the deduction of expenses and profit under section 772(d) of the Act;

(c) *Adjustment for difference in level of trade.* (1) *In general.* The Secretary will adjust normal value for a difference in level of trade if:

(i) The Secretary calculates normal value on the basis of a sale that the Secretary determines is made at a different level of trade from the export price or the constructed export price (whichever is applicable); and

(ii) The Secretary determines that the difference in level of trade has an effect on price comparability.

(2) *Identifying different levels of trade.* The Secretary will determine that sales are made at different levels of trade if such sales involve the performance of different selling functions and activities. In making this determination, the Secretary will consider all selling functions and activities performed by the seller. The fact that there is some overlap in selling functions and activities will not preclude a determination that sales are made at different levels of trade. Where the selling functions and activities are substantially the same, however, sales normally will be considered to have been made at the same level of trade.

(3) *Effect on price comparability.* The Secretary will determine that a difference in level of trade has an effect on price comparability only if it is established to the satisfaction of the Secretary that, with respect to the sales used to calculate normal value, there is a pattern of consistent price differences between sales made at different levels of trade.

(4) *Amount of adjustment.* The Secretary normally will calculate the amount of a level of trade adjustment by:

(i) Calculating an average of the prices of the sales used to calculate normal value at each level of trade in the exporting country or the third country (whichever is applicable), after making any other adjustments required by section 773(a)(6) of the Act and this subpart;

(ii) Calculating the average of the percentage differences between such average prices; and

(iii) Applying the average percentage difference to the prices of sales made at the level of trade that is different from the level of trade of the export price or the constructed export price (whichever is applicable).

(d) *Constructed export price offset.* In making the constructed export price offset under section 773(a)(7)(B) of the Act, ''indirect selling expenses'' means expenses, other than direct selling expenses or assumed selling expenses (see § 351.410), that the seller would incur regardless of whether particular sales were made, but that reasonably may be attributed, in whole or in part, to such sales.

§ 351.413 Disregarding insignificant adjustments.

Ordinarily, under section 777A(a)(2) of the Act, an ''insignificant adjustment'' is any individual adjustment having an ad valorem effect of less than 0.33 percent, or any group of adjustments having an ad valorem effect of less than 1.0 percent, of the export price, constructed export price, or normal value, as the case may be. Groups of adjustments are adjustments for differences in circumstances of sale under § 351.410, adjustments for differences in the physical characteristics of the merchandise under § 351.411, and adjustments for differences in the levels of trade under § 351.412.

§ 351.414 Comparison of normal value with export price (constructed export price).

(a) *Introduction.* The Secretary normally will average prices used as the basis for normal value and, in an investigation, prices used as the basis for export price or constructed export price as well. This section explains when and how the Secretary will average prices in making comparisons of export price or constructed export price with normal value. (See section 777A(d) of the Act).

(b) *Description of methods of comparison.* (1) *Average-to-average method.* The ''average-to-average'' method involves a comparison of the weighted average of the normal values with the weighted average of the export prices (and constructed export prices) for comparable merchandise.

(2) *Transaction-to-transaction method.* The ''transaction-to-transaction'' method involves a comparison of the normal values of individual transactions with the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(3) *Average-to-transaction method.* The ''average-to-transaction'' method involves a comparison of the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(c) *Preferences.* (1) In an investigation, the Secretary normally will use the average-to-average method. The Secretary will use the transaction-to-

transaction method only in unusual situations, such as when there are very few sales of subject merchandise and the merchandise sold in each market is identical or very similar or is custom-made.

(2) In a review, the Secretary normally will use the average-to-transaction method.

(d) Application of the average-to-average method. (1) *In general.* In applying the average-to-average method, the Secretary will identify those sales of the subject merchandise to the United States that are comparable, and will include such sales in an ''averaging group.'' The Secretary will calculate a weighted average of the export prices and the constructed export prices of the sales included in the averaging group, and will compare this weighted average to the weighted average of the normal values of such sales.

(2) *Identification of the averaging group.* An averaging group will consist of subject merchandise that is identical or virtually identical in all physical characteristics and that is sold to the United States at the same level of trade. In identifying sales to be included in an averaging group, the Secretary also will take into account, where appropriate, the region of the United States in which the merchandise is sold, and such other factors as the Secretary considers relevant.

(3) *Time period over which weighted average is calculated.* When applying the average-to-average method, the Secretary normally will calculate weighted averages for the entire period of investigation or review, as the case may be. However, when normal values, export prices, or constructed export prices differ significantly over the course of the period of investigation or review, the Secretary may calculate weighted averages for such shorter period as the Secretary deems appropriate.

(e) *Application of the average-to-transaction method.* (1) *In general.* In applying the average-to-transaction method in a review, when normal value is based on the weighted average of sales of the foreign like product, the Secretary will limit the averaging of such prices to sales incurred during the contemporaneous month.

(2) *Contemporaneous month.* Normally, the Secretary will select as the contemporaneous month the first of the following which applies:

(i) The month during which the particular U.S. sale under consideration is made;

(ii) If there are no sales of the foreign like product during this month, the most recent of the three months prior to the month of the U.S. sale in which there was a sale of the foreign like product.

(iii) If there are no sales of the foreign like product during any of these months, the earlier of the two months following the month of the U.S. sale in which there was a sale of the foreign like product.

(f) *Targeted dumping.* (1) *In general.* Notwithstanding paragraph (c)(1) of this section, the Secretary may apply the average-to-transaction method, as described in paragraph (e) of this section, in an antidumping investigation if:

(i) There is targeted dumping in the form of a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time; and

(ii) The Secretary explains why such differences cannot be taken into account using the average-to-average method or the transaction-to-transaction method.

In applying paragraph (f)(1)(i) of this section, the Secretary will use, among other things, standard statistical techniques in determining whether there is a pattern of prices that differ significantly.

(2) *Limitation of average-to-transaction method to targeted dumping.* Where the criteria for identifying targeted dumping under paragraph (f)(1) of this section are satisfied, the Secretary normally will limit the application of the average-to-transaction method to those sales that constitute targeted dumping under paragraph (f)(1)(i) of this section.

(3) *Allegations concerning targeted dumping.* The Secretary will not consider targeted dumping absent an allegation, normally filed within the time indicated in § 351.301(d)(4). Allegations must include all supporting factual information, and an explanation as to why the average-to-average or transaction-to-transaction method could not take into account any alleged price differences.

(g) *Requests for information.* In an investigation, the Secretary will request information relevant to the identification of averaging groups under paragraph (d)(2) of this section and to the analysis of possible targeted dumping under paragraph (f) of this section. If a response to a request for such information is such as to warrant the application of the facts otherwise available, within the meaning of section 776 of the Act and § 351.308, the Secretary may apply the average-to-transaction method to all the sales of the producer or exporter concerned.

§ 351.415 Conversion of currency.

(a) *In general.* In an antidumping proceeding, the Secretary will convert foreign currencies into United States dollars using the rate of exchange on the date of sale of the subject merchandise.

(b) *Exception.* If the Secretary establishes that a currency transaction on forward markets is directly linked to an export sale under consideration, the Secretary will use the exchange rate specified with respect to such foreign currency in the forward sale agreement to convert the foreign currency.

(c) *Exchange rate fluctuations.* The Secretary will ignore fluctuations in exchange rates.

(d) *Sustained movement in foreign currency value.* In an antidumping investigation, if there is a sustained movement increasing the value of the foreign currency relative to the United States dollar, the Secretary will allow exporters 60 days to adjust their prices to reflect such sustained movement.

Subpart E—[Reserved]

Subpart F—Subsidy Determinations Regarding Cheese Subject to an In-Quota Rate of Duty

§ 351.601 Annual list and quarterly update of subsidies.

The Secretary will make the determinations called for by section 702(a) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 1202 note) based on the available information, and will publish the annual list and quarterly updates described in such section in the Federal Register.

§ 351.602 Determination upon request.

(a) *Request for determination.* (1) Any person, including the Secretary of Agriculture, who has reason to believe there have been changes in or additions to the latest annual list published under § 351.601 may request in writing that the Secretary determine under section 702(a)(3) of the Trade Agreements Act of 1979 whether there are any changes or additions. The person must file the request with the Central Records Unit (see § 351.103). The request must allege either a change in the type or amount of any subsidy included in the latest annual list or quarterly update or an additional subsidy not included in that list or update provided by a foreign government, and must contain the following, to the extent reasonably available to the requesting person:

(i) The name and address of the person;

(ii) The article of cheese subject to an in-quota rate of duty allegedly benefitting from the changed or additional subsidy;

(iii) The country of origin of the article of cheese subject to an in-quota rate of duty; and

(iv) The alleged subsidy or changed subsidy and relevant factual information (particularly documentary evidence) regarding the alleged changed or additional subsidy including the authority under which it is provided, the manner in which it is paid, and the value of the subsidy to producers or exporters of the article.

(2) The requirements of § 351.303 (c) and (d) apply to this section.

(b) *Determination.* Not later than 30 days after receiving an acceptable request, the Secretary will:

(1) In consultation with the Secretary of Agriculture, determine based on the available information whether there has been any change in the type or amount of any subsidy included in the latest annual list or quarterly update or an additional subsidy not included in that list or update is being provided by a foreign government;

(2) Notify the Secretary of Agriculture and the person making the request of the determination; and

(3) Promptly publish in the Federal Register notice of any changes or additions.

§ 351.603 Complaint of price-undercutting by subsidized imports.

Upon receipt of a complaint filed with the Secretary of Agriculture under section 702(b) of the Trade Agreements Act concerning price-undercutting by subsidized imports, the Secretary will promptly determine, under section 702(a)(3) of the Trade Agreements Act of 1979, whether or not the alleged subsidies are included in or should be added to the latest annual list or quarterly update.

§ 351.604 Access to information.

Subpart C of this part applies to factual information submitted in connection with this subpart.

Annex I.—Deadlines for Parties in Countervailing Investigations

Deadlines for Parties in Countervailing Investigations

Day	Event	Proposed regulation
0 days	Date of Initiation [1]	
31 days [2]	Extension request for responses to questionnaires	351.301(c)(2)(iv).
37 days	Application for an Administrative Protective Order	351.305(b)(3).
40 days	Request for postponement by petitioner	351.205(e).
45 days	Allegation of critical circumstances	351.206(c)(2)(i).
47 days	Questionnaire Response Due	351.301(c)(2)(iii).
No deadline in an investigation	Exclusion requests	351.204(e)(3).
55 days	Allegation of upstream subsidies	351.301(d)(3)(ii)(B).
65 days (Can be extended)	Preliminary Determination	351.205(b)(1).
70 days	Submission of proposed suspension agreement	351.208(f)(1).
75 days [3]	Submission of information	351.301(b)(1).
75 days	Ministerial error comments	351.224(c)(2).
77 days	Request to align a CVD case with a concurrent AD case	351.210(i).
80 days	Replies to ministerial error comments	351.224(c)(3).
102 days	Request for a hearing	351.310(c).
115 days (Can be changed)	Closed hearing sessions	351.310(f).
115 days (Can be changed)	Submission of briefs	351.309(c)(1)(i).
119 days	Critical circumstances allegation	351.206(e).
120 days	Submission of rebuttal briefs	351.309(d).
125 days	Allegation of upstream subsidies	351.301(d)(3)(ii)(B).
140 days (Can be extended)	Final Determination	351.210.
170 days	Ministerial error comments	351.224(c)(2).
175 days	Replies to ministerial error comments	351.224(c)(3).
175 days	Request for exception from the assessment of duties	351.211(d).
192 days	Termination of suspension of liquidation	351.210(h).
212 days	Order issued	351.211.

[1] All of the following references to days are keyed to the date of initiation.
[2] This assumes that the Department will send out the questionnaire within 15 days of the initiation.
[3] Assuming about 17 days between the preliminary determination and verification

Annex II.—Deadlines for Parties in Countervailing Administrative Reviews

Deadlines for Parties in Countervailing Administrative Reviews

Day	Event	Proposed Regulation
0 days[1]	Last Day of the Anniversary Month	351.213(b).
30 days	Publication of Initiation	None.
37 days	Application for an Administrative Protective Order	351.305(b)(3).
66 days	Extension request for responses to questionnaires	351.301(c)(2)(iv).
82 days	Questionnaire response	351.301(c)(2)(iii).
120 days	Withdrawal of Request for Review	351.213(d)(1).
170 days	Submission of information	351.301(b)(2).
245 days (Can be extended)	Preliminary Results	351.213(h)(1)
255 days	Ministerial error comments	351.224(c)(2).
260 days	Replies to ministerial error comments	351.224(c)(3).
282 days	Request for a hearing	351.310(c).
282 days (Can be changed)	Closed hearing sessions	351.310(f).
282 days (Can be changed)	Submission of briefs	351.309(c)(1)(ii).

Day	Event	Proposed Regulation
287 days	Submission of rebuttal briefs	351.309(d).
365 days (Can be extended)	Final Results	351.213(h)(1).
375 days	Ministerial error comments	351.224(c)(2).
380 days	Replies to ministerial error comments	351.224(c)(3).

[1] This assumes that the Department will send out the questionnaire within 45 days of the last day of the anniversary month.

Annex III.—Deadlines for Parties in Antidumping Investigations

Deadlines for Parties in Antidumping Investigations

Day	Event	Proposed regulation
Day 0	Date of Initiation[1]	
37 days	Application for an Administrative Protective Order	351.305(b)(3).
50 days[2]	Extension request for responses to questionnaires	351.301(c)(2)(iv).
50 days	Section A response	None.
54 days	Country-wide cost allegation	351.301(d)(2)(i)(A).
65 days	Section B and C responses	351.301(c)(2)(iii).
65 days	Section D and E response	See 351.301(c)(2)(ii).
77 days	Viability arguments	351.301(d)(1).
85 days	Company-specific cost allegations	351.301(d)(2)(i)(B).
115 days	Request for Postponement by Petitioner	351.205(e).
120 days	Allegation of critical circumstances	351.206(c)(2)(i).
140 days (Can be extended)	Preliminary Determination	351.205(b)(1).
150 days	Ministerial error comments	351.224(c)(2).
155 days	Replies to ministerial error comments	351.224(c)(3).
155 days	Submission of proposed suspension agreement	351.208(f)(1).
161 days[3]	Submission of information	351.301(b)(1).
177 days	Request for a hearing	351.310(c).
187 days	Submission of publicly available information to value factors (NME's).	351.301(c)(3).
194 days	Critical circumstance allegation	351.206(e).
197 days (Can be changed)	Closed hearing sessions	351.310(f).
197 days (Can be changed)	Submission of briefs	351.309(c)(i).
202 days	Submission of rebuttal briefs	351.309(9).
215 days	Request for postponement of the final determination	351.210(e).
215 days (Can be extended)	Final Determination	351.210.
225 days	Ministerial error comments	351.224(c)(2).
230 days	Replies to ministerial error comments	351.224(c)(3).
230 days	Request for exception from assessment of duties	351.211(d)(2).
267 days	Order issued	351.211(b).
282 days	Suspension agreement for regional industry	351.208(f)(1)(ii).

[1] All of the following references to days are keyed to the date of initiation.
[2] This assumes that the Department will send out the questionnaire within 5 days of the ITC vote.
[3] Assuming about 28 days between the preliminary determination and verification.

Annex IV.—Deadlines for Parties in Antidumping Administrative Reviews

Deadlines for Parties in Antidumping Administrative Reviews

Day	Event	Proposed Regulation
0 days[1]	Last Day of the Anniversary Month	Sec. 351.213(b).
30 days	Publication of Initiation	None.
37 days	Application for an Administrative Protective Order	351.305 (b)(3).
60 days	Request to Examine Absorption of Duties (AD)	351.213(j).
66 days	Extension request for responses to questionnaires	351.301(c)(2)(iv).
66 days	Section A response	None .
77 days	Country-wide cost allegation	351.301(d)(2)(i)(A).
82 days	Sections B and C response	351.301(c)(2)(iii).
82 days	Sections D and E response	None.
92 days	Viability arguments	351.301(d)(1).
102 days	Company-specific cost allegations	351.301(d)(2)(i)(B).
120 days	Withdrawal of Request for Review	351.213(d)(1).
170 days	Submission of information	351.301(b)(2).
245 days (Can be extended)	Preliminary Results	351.213(h)(1).
255 days	Ministerial error comments	351.224(c)(2).
260 days	Replies to ministerial error comments	351.224(c)(3).
272 days	Submission of publicly available information to value factors (NME's).	351.301(c)(3)(ii).
282 days	Request for a hearing	351.310(c).
282 days (Can be changed)	Closed hearing sessions	351.310(f).
282 days (Can be changed)	Submission of briefs	351.309(c)(1)(ii).
287 days	Submission of rebuttal briefs	351.309(d).

Day	Event	Proposed Regulation
365 days (Can be extended)	Final results	351.213(h)(1).
375 days	Ministerial error comments	351.224(c)(2).
380 days	Replies to ministerial error comments	351.224(c)(3).

[1] This assumes that the Department will send out the questionnaire within 45 days of the last day of the anniversary month.

Annex V.—Comparison of Prior and Proposed Regulations

COMPARISON OF PRIOR AND PROPOSED REGULATIONS

Prior	Proposed	Description
	PART 353—ANTIDUMPING DUTIES	
	Subpart A—Scope and Definitions	
353.1	351.101	Scope of regulations.
353.2	351.102	Definitions.
353.3	351.104	Record of proceedings.
353.4	351.105	Public, proprietary, privileged and classified.
353.5	Removed	Trade and Tariff Act of 1984 amendments.
353.6	351.106	*De minimis* weighted-average dumping margin.
	Subpart B—Antidumping Duty Procedures	
353.11	351.201	Self-initiation.
353.12	351.202	Petition requirements.
353.13	351.203	Determination of sufficiency of petition.
353.14	351.204(e)	Exclusion from antidumping duty order.
353.15	351.205	Preliminary determination.
353.16	351.206	Critical circumstances.
353.17	351.207	Termination of investigation.
353.18	351.208	Suspension of investigation.
353.19	351.209	Violation of suspension agreement.
353.20	351.210	Final determination.
353.21	351.211	Antidumping duty order.
353.21(c)	351.204(e)	Exclusion from antidumping duty order.
353.22(a)–(d)	351.213, 351.221	Administrative reviews under 751(a) of the Act.
353.22(e)	351.212(c)	Automatic assessment of duties.
353.22(f)	351.216, 351.221(c)(3)	Changed circumstances reviews.
353.22(g)	351.215, 351.221(c)(2)	Expedited antidumping review.
353.23	351.212(d)	Provisional measures deposit cap.
353.24	351.212(e)	Interest on overpayments and underpayments.
353.25	351.222	Revocation of orders; termination of suspended investigations.
353.26	351.402(f)	Reimbursement of duties.
353.27	351.223	Downstream product monitoring.
353.28	351.224	Correction of ministerial errors.
353.29	351.225	Scope rulings.
	Subpart C—Information and Argument	
353.31(a)–(c)	351.301	Time limits for submission of factual information.
353.31(a)(3)	351.302(d), 351.104(a)(2)	Return of untimely material.
353.31(b)(3)	351.302(c)	Request for extension of time.
353.31(d)–(i)	351.303	Filing, format, translation, service and certification.
353.32	351.304	Request for proprietary treatment of information.
353.33	351.104, 351.304(a)(2)	Information exempt from disclosure.
353.34	351.305, 351.306	Disclosure of information under protective order.
353.35	Removed	*Ex parte* meeting.
353.36	351.307	Verification.
353.37	351.308	Determinations on the basis of the facts available.
353.38(a)–(e)	351.309	Written argument.
353.38(f)	351.310	Hearings.
	Subpart D—Calculation of Export Price, Constructed Export Price, Fair Value and Normal Value	
353.41	351.402	Calculation of export price.
353.42(a)	351.102	Fair value (definition).
353.42(b)	351.104(c)	Transactions and persons examined.
353.43	351.403(b)	Sales used in calculating normal value.
353.44	Removed	Sales at varying prices.
353.45	351.403	Transactions between affiliated parties.
353.46	351.404	Selection of home market as the basis for normal value.
353.47	Removed	Intermediate countries.
353.48	351.404	Basis for normal value if home market sales are inadequate.
353.49	351.404	Sales to a third country.
353.50	351.405, 351.407	Calculation of normal value based on constructed value.
353.51	351.406, 351.407	Sales at less than the cost of production.
353.52	351.408	Nonmarket economy countries.
353.53	Removed	Multinational corporations.

COMPARISON OF PRIOR AND PROPOSED REGULATIONS—Continued

Prior	Proposed	Description
353.54	351.401(b)	Claims for adjustments.
353.55	351.409	Differences in quantities.
353.56	351.410	Differences in circumstances of sale.
353.57	351.411	Differences in physical characteristics.
353.58	351.412	Levels of trade.
353.59(a)	351.413	Insignificant adjustments.
353.59(b)	351.414	Use of averaging.
353.60	351.415	Conversion of currency.
	PART 355—COUNTERVAILING DUTIES	
	Subpart A—Scope and Definitions	
355.1	351.001	Scope of regulations.
355.2	351.002	Definitions.
355.3	351.004	Record of proceeding.
355.4	351.005	Public, proprietary, privileged and classified.
355.5	351.003(a)	Subsidy library.
355.6	Removed	Trade and Tariff Act of 1984 amendments.
355.7	351.006	*De minimis* net subsidies.
	Subpart B—Countervailing Duty Procedures	
355.11	351.101	Self-initiation.
355.12	351.102	Petition requirements.
355.13	351.103	Determination of sufficiency of petition.
355.14	351.104(e)	Exclusion from countervailing duty order.
355.15	351.105	Preliminary determination.
355.16	351.106	Critical circumstances.
355.17	351.107	Termination of investigation.
355.18	351.108	Suspension of investigation.
355.19	351.109	Violation of agreement.
355.20	351.110	Final determination.
355.21	351.111	Countervailing duty order.
355.21(c)	351.104(e)	Exclusion from countervailing duty order.
355.22(a)–(c)	351.113, 351.121	Administrative reviews under 751(a) of the Act.
355.22(d)	Removed	Calculation of individual rates.
355.22(e)	351.113(h)	Possible cancellation or revision of suspension agreements.
355.22(f)	Removed	Review of individual producer or exporter.
355.22(g)	351.112(c)	Automatic assessment of duties.
355.22(h)	351.116, 351.121(c)(3)	Changed circumstances review.
355.22(i)	351.120, 351.221(c)(7)	Review at the direction of the President.
355.23	351.112(d)	Provisional measures deposit cap.
355.24	351.112(e)	Interest on overpayments and underpayments.
355.25	351.112	Revocation of orders; termination of suspended investigations.
355.27	351.123	Downstream product monitoring.
355.28	351.124	Correction of ministerial errors.
355.29	351.125	Scope determinations.
	Subpart C—Information and Argument	
355.31(a)–(c)	351.301	Time limits for submission of factual information.
355.31(a)(3)	351.302(d), 351.104(a)(2)	Return of untimely material.
355.31(b)(3)	351.302(c)	Request for extension of time.
355.31(d)–(i)	351.303	Filing, format, translation, service and certification.
355.32	351.304	Request for proprietary treatment of information.
355.33	351.104, 351.304(a)(2)	Information exempt from disclosure.
355.34	351.305, 351.306	Disclosure of information under protective order.
355.35	Removed	*Ex parte* meeting.
355.36	351.307	Verification.
355.37	351.308	Determinations on the basis of the facts available.
355.38(a)–(e)	351.309	Written argument.
355.38(f)	351.310	Hearings.
355.39	351.311	Subsidy practice discovered during investigation or review.
	Subpart D—Quota Cheese Subsidy Determinations	
355.41	Removed	Definition of subsidy.
355.42	351.601	Annual list and quarterly update.
355.43	351.602	Determination upon request.
355.44	351.603	Complaint of price-undercutting.
355.45	351.604	Access to information.

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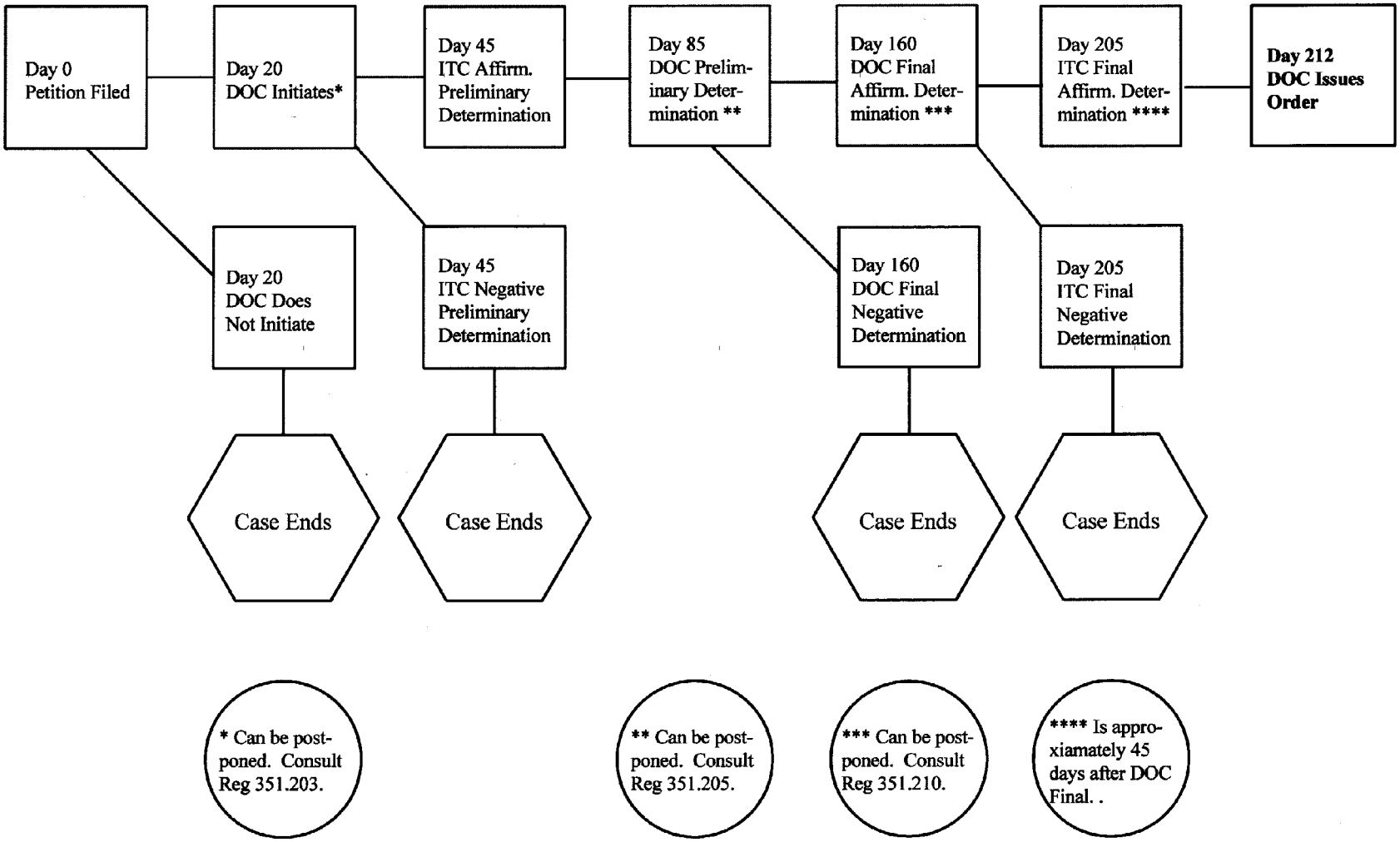
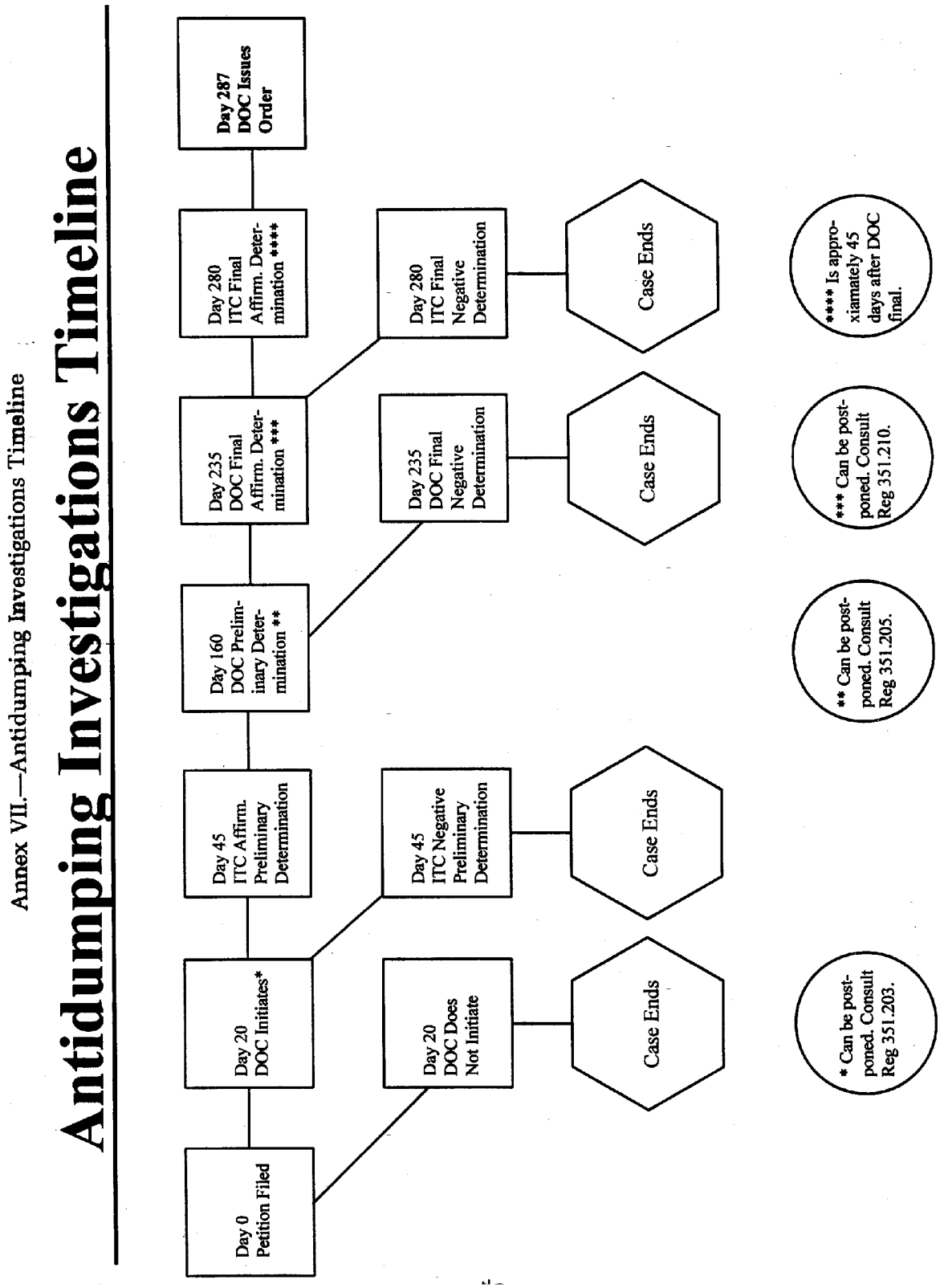
Annex VI.—Countervailing Investigations Timeline

Countervailing Investigations Timeline



Annex VII.—Antidumping Investigations Timeline



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