Dated: April 9, 1998.

**Anthony J. Meyer,**

*Coordinator, Trade Adjustment and Technical Assistance.*

[FR Doc. 98–10068 Filed 4–15–98; 8:45 am]

**BILLING CODE 3510–24–M**

## DEPARTMENT OF COMMERCE

## International Trade Administration

## Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Policy Bulletin; request for comments.

**SUMMARY:** The Department of Commerce is proposing policies regarding the conduct of five-year (''sunset'') reviews of antidumping and countervailing duty orders and suspended investigations pursuant to the provisions of sections 751(c) and 752 of the Tariff Act of 1930, as amended, and the Department's regulations. The proposed policies are intended to complement the applicable statutory and regulatory provisions by providing guidance on methodological or analytical issues not explicitly addressed by the statute and regulations.

**DATES:** To be assured of consideration, written comments must be received not later than May 12, 1998. Rebuttal comments must be received not later than June 2, 1998.

**ADDRESSES:** A signed original and six copies of each set of comments, including reasons for any recommendation, along with a cover letter identifying the commenter's name and address, should be submitted to Robert S. LaRussa, Assistant Secretary for Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; Attention: Sunset Policy Bulletin.

**FOR FURTHER INFORMATION CONTACT:** Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560, or Stacy J. Ettinger, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, at (202) 482–4618.

**SUPPLEMENTARY INFORMATION:** This policy bulletin proposes guidance regarding the conduct of sunset reviews. As described below, the proposed policies are intended to complement the applicable statutory and regulatory provisions by providing guidance on methodological or analytical issues not explicitly addressed by the statute and regulations. We invite public comment on the policies.

### Request for Comment

The Department solicits comments pertaining to its proposed policies concerning sunset reviews. Initial comments should be received by the Assistant Secretary not later than May 12, 1998. Any rebuttals to the initial comments should be received by the Assistant Secretary not later than June 2, 1998. Commenters should file a signed original and six copies of each set of initial and rebuttal comments. All comments will be available for public inspection and photocopying in the Import Administration's Central Records Unit, Room B–099, between the hours of 8:30 am and 5:00 pm on business days.

Each person submitting a comment should include the commenter's name and address, and give reasons for any recommendations. To facilitate their consideration by the Department, initial and rebuttal comments regarding these proposed policies should be submitted in the following format: (1) number each comment in accordance with the paragraph numbering of the proposed policy being addressed; (2) begin each comment on a separate page; (3) provide a brief summary of the comment (a maximum of three sentences) and label this section ''Summary of the Comment;'' and (4) concisely state the issue identified and discussed in the comment and provide reasons for any recommendation.

To help simplify the processing and distribution of comments, the Department requests the submission of initial and rebuttal comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be on a DOS formatted 3.5″ diskette in either WordPerfect format or a format that the WordPerfect program can convert and import into WordPerfect. Please make each comment a separate file on the diskette and name each separate file using the paragraph numbering of the proposed policy being addressed in the comment.

Comments received on diskette will be made available to the public on the Internet at the following address: ''http://www.ita.doc.gov/import_admin/records/''. In addition, upon request, the Department will make comments filed in electronic form available to the public on 3.5″ diskettes (at cost), with specific instructions for accessing compressed data (if necessary). Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, IA Webmaster, at (202) 482–0866.

Dated: April 10, 1998.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

### Policy Bulletin 98:3

*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*

Sunset Review Policies

**Sunset Review Policies**

**I. Overview**

The Uruguay Round Agreements Act (''URAA'') revised the Tariff Act of 1930, as amended (''the Act''), by requiring that antidumping (''AD'') and countervailing duty (''CVD'') orders be revoked, and suspended investigations be terminated, after five years unless revocation or termination would be likely to lead to a continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry. The URAA assigns to the Department of Commerce (''the Department'') the responsibility of determining whether revocation of an antidumping or countervailing duty order, or termination of a suspended investigation, would be likely to lead to a continuation or recurrence of dumping or a countervailable subsidy. The Department then must transmit to the International Trade Commission (''the Commission'') its likelihood determination and its determination regarding the magnitude of the margin of dumping or the net countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation is terminated. The URAA also requires that the Department begin initiating sunset reviews in July 1998, that all sunset reviews of ''transition orders''—those antidumping and countervailing duty orders and suspended investigations in effect on January 1, 1995, the effective date of the URAA—be initiated by December 31, 1999, and that all reviews of transition orders be completed by June 30, 2001. The URAA further requires that the Department initiate a sunset review of each order or suspended investigation that is not a ''transition order'' not later than 30 days before the fifth anniversary of publication of the order or suspension agreement in the **Federal Register**. Pursuant to section 751(c)(1) of the Act, initiation of sunset reviews is automatic.

Sunset reviews of antidumping and countervailing duty orders and suspended investigations will be conducted pursuant to the provisions of the Act, including sections 751(c) and 752 of the Act, and the Department's regulations at 19 CFR Part 351, including §§ 351.218, 351,221, 351.222(i), 351.307, 351.308(f), 351.309, and 351.310 (*see Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (interim final rules)). These policies are intended to complement the applicable statutory and regulatory provisions by providing guidance on methodological or analytical issues not explicitly addressed by the statute and regulations. In developing these policies, the Department has drawn on the guidance provided by the legislative history accompanying the URAA, specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994).

**II. Sunset Reviews in Antidumping Proceedings**

*A. Determination of Likelihood of Continuation or Recurrence of Dumping*

1. In General

In accordance with section 752(c)(1) of the Act, in determining whether revocation of an antidumping order or termination of a suspended dumping investigation would be likely to lead to continuation or recurrence of dumping, the Department will consider—

(a) the weighted-average dumping margins determined in the investigation and subsequent reviews, and

(b) the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order or acceptance of suspension agreement.

2. Basis for Likelihood Determination

Consistent with the SAA at 879, and the House Report at 56, the Department will make its determination of likelihood on an order-wide basis.

3. Likelihood of Continuation or Recurrence of Dumping

The SAA at 889, the House Report at 63, and the Senate Report at 52, state that,

> [D]eclining import volumes accompanied by the continued existence of dumping margins after the issuance of the order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes.

In addition, the SAA at 890, and the House Report at 63–64, state that,

> [E]xistence of dumping margins after the order, or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed. If imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping.

Therefore, the Department normally will determine that revocation of an antidumping order or termination of a suspended dumping investigation is likely to lead to continuation or recurrence of dumping where—

(a) dumping continued at any level above *de minimis* after the issuance of the order or the suspension agreement, as applicable;

(b) imports of the subject merchandise ceased after issuance of the order or the suspension agreement, as applicable; or

(c) dumping was eliminated after the issuance of the order or the suspension agreement, as applicable, and import volumes for the subject merchandise declined significantly.

The Department recognizes that, in the context of a sunset review of a suspended investigation, the data relevant to the criteria under paragraphs (a) through (c), above, may not be conclusive with respect to likelihood. Therefore, the Department may be more likely to entertain good cause arguments under paragraph II.C in a sunset review of a suspended investigation.

4. No Likelihood of Continuation or Recurrence of Dumping

The SAA at 889–90, and the House Report at 63, state that,

> [D]eclining (or no) dumping margins accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked.

*See also*, the Senate Report at 52.

Therefore, the Department normally will determine that revocation of an antidumping order or termination of a suspended dumping investigation is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order or the suspension agreement, as applicable, and import volumes remained steady or increased. Declining margins alone normally would not qualify because the legislative history makes clear that continued margins at any level would lead to a finding of likelihood. *See* section II.A.3, above. In analyzing whether import volumes remained steady or increased, the Department normally will consider companies' relative market share. Such information should be provided to the Department by the parties.

The Department recognizes that, in the context of a sunset review of a suspended investigation, the elimination of dumping coupled with

steady or increasing import volumes may not be conclusive with respect to no likelihood. Therefore, the Department may be more likely to entertain good cause arguments under paragraph II.C in a sunset review of a suspended investigation.

5. Treatment of Zero or De Minimis Margins

Section 752(c)(4)(A) of the Act provides that a weighted-average dumping margin determined in the investigation or subsequent reviews that is zero or *de minimis* shall not by itself require the Department to determine that revocation of an antidumping duty order or termination of a suspended investigation would not be likely to lead to continuation or recurrence of sales at less than fair value.

Therefore, although the Department may consider the existence of a zero or *de minimis* dumping margin in making its determination of likelihood, a zero or *de minimis* dumping margin, in itself, will not require that the Department determine that continuation or recurrence of dumping is not likely. In accordance with section 752(c)(4)(B) of the Act and 19 CFR 351.106(c)(1), the Department will treat as *de minimis* any weighted-average dumping margin that is less than 0.5 percent *ad valorem* or the equivalent specific rate.

*B. Magnitude of the Margin of Dumping That is Likely to Prevail*

1. In General

Section 752(c)(3) of the Act provides that the Department will provide to the Commission the magnitude of the margin of dumping that is likely to prevail if the order is revoked or the suspended investigation is terminated. The SAA at 890, and the House Report at 64, provide that the Department normally will select a margin ''from the investigation, because that is the only calculated rate that reflects the behavior of exporters * * * without the discipline of an order or suspension agreement in place.''

Therefore, except as provided in paragraphs II.B.2 and II.B.3, the Department normally will provide to the Commission the margin that was determined in the final determination in the original investigation. In certain situations, the Department may provide to the Commission the margin that was determined in the preliminary determination in the original investigation, *e.g.*, where the Department did not issue a final determination because the investigation was suspended and continuation was not requested. Specifically, the Department normally will provide the company-specific margin from the investigation for each company regardless of whether the margin was calculated using a company's own information or based on best information available or facts available. Furthermore, in light of the legislative history discussed above, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the all others rate from the investigation. In addition, the Department normally will provide to the Commission a list of companies excluded from the order based on zero or *de minimis* margins, if any, or subsequently revoked from the order, if any.

In a sunset review of an antidumping duty finding, *i.e.*, where the original investigation was conducted by the Department of the Treasury (''Treasury''), the Department normally will provide to the Commission the company-specific margin or the all others rate included in the Treasury finding published in the **Federal Register**. If no company-specific margin or all others rate is included in the Treasury finding, the Department normally will provide to the Commission the company-specific margin from the first final results of administrative review published in the **Federal Register** by the Department. If the first final results of administrative review of the finding do not contain a margin for a particular company, the Department normally will provide to the Commission, as the margin for that company, the first ''new shippers'' rate [1] established by the Department for the finding.

2. Use of a More Recently Calculated Margin

The SAA at 890–91, and the House Report at 64, provide that in certain instances, it may be more appropriate for the Department to provide the Commission with a more recently calculated margin. Specifically, the SAA and the House Report state that, ''if dumping margins have declined over the life of an order and imports have remained steady or increased, [the Department] may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review.'' In addition, the SAA at 889–90, and the House Report at 63, state that, ''declining (or no) dumping margins accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked.'' *See also*, the Senate Report at 52.

Therefore, unless the Department finds no likelihood of continuation or recurrence of dumping, the Department may, in response to argument from an interested party, provide to the Commission a more recently calculated margin for a particular company where, for that particular company, dumping margins declined or dumping was eliminated after the issuance of the order or the suspension agreement, as applicable, and import volumes remained steady or increased. In analyzing whether import volumes remained steady or increased, the Department normally will consider the company's relative market share. Such information should be provided to the Department by the parties.

In addition, a company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order. Therefore, unless the Department finds no likelihood of continuation or recurrence of dumping, the Department may, in response to argument from an interested party, provide to the Commission a more recently calculated margin for a particular company where, for that particular company, dumping margins increased after the issuance of the order, even if the increase was as a result of the application of best information available or facts available.

3. Duty Absorption

a. In General

Section 751(a)(4) of the Act provides that, during the second or fourth administrative review of an order (or, for transition orders, during an administrative review initiated in 1996 or 1998 (*see* 19 CFR 351.213(j))), upon request, the Department will determine whether antidumping duties have been absorbed by a foreign producer or exporter subject to an order if the subject merchandise is sold in the

[1] In 1993, the Department began using the all others rate from the original investigation as the appropriate cash deposit rate for companies not covered by a review or the original investigation. Prior to that time, the Department's practice was to use a ''new shippers'' rate resulting from a particular review as the cash deposit rate for companies whose first shipment occurred after the period covered by the review. The Department used as the ''new shippers'' rate the highest of the rates of all responding firms with shipments during the review period. This ''new shippers'' rate is unrelated to new shipper reviews conducted pursuant to the URAA under section 751(a)(2)(B) of the Act.

United States through an importer who is affiliated with such foreign producer or exporter. The statute further provides that the Department will notify the Commission of its findings regarding such duty absorption for the Commission to consider in conducting a sunset review.

Therefore, the Department will provide to the Commission, on a company-specific basis, its findings regarding duty absorption, if any, for all reviews in which the Department conducted a duty absorption analysis.

b. Effect on Magnitude of the Margin

The SAA at 885, and the House report at 60, state that,

> Duty absorption is a strong indicator that the current dumping margins calculated by [the Department] in reviews may not be indicative of the margins that would exist in the absence of an order. Once an order is revoked, the importer could achieve the same pre-revocation return on its sales by lowering its prices in the U.S. in the amount of the duty that previously was being absorbed.

*See also,* the Senate Report at 50. The SAA at 886, and the House Report at 61, also provide that if, in the fourth administrative review (or, for transition orders, for an administrative review initiated in 1998), the Department finds that absorption has taken place, the Department will take that into account in its determination regarding the dumping margins likely to prevail if an order were revoked. The Senate Report at 50, suggests that the Department's notification to the Commission of its findings on duty absorption should include, to the extent practicable, some indication of the magnitude of the absorption.

Therefore, notwithstanding paragraphs II.B.1 and II.B.2, where the Department has found duty absorption in the fourth administrative review of the order (or, for transition orders, in an administrative review initiated in 1998), the Department normally will—

(a) determine that a company's current dumping margin is not indicative of the margin likely to prevail if the order is revoked; and

(b) provide to the Commission the higher of the margin that the Department otherwise would have reported to the Commission or the most recent margin for that company adjusted to account for the Department's findings on duty absorption.

The Department normally will adjust a company's most recent margin to take into account its findings on duty absorption by increasing the margin by the amount of duty absorption on those sales for which the Department found duty absorption.

*C. Consideration of Other Factors*

Section 752(c)(2) of the Act provides that, if the Department determines that good cause is shown, the Department also will consider other price, cost, market or economic factors in determining the likelihood of continuation or recurrence of dumping. The SAA at 890, states that such other factors might include,

> the market share of foreign producers subject to the antidumping proceeding; changes in exchange rates, inventory levels, production capacity, and capacity utilization; any history of sales below cost of production; changes in manufacturing technology in the industry; and prevailing prices in relevant markets.

The SAA at 890, also notes that the list of factors is illustrative, and that the Department should analyze such information on a case-by-case basis.

Therefore, the Department will consider other factors in AD sunset reviews if the Department determines that good cause to consider such other factors exists. The burden is on an interested party to provide information or evidence that would warrant consideration of the other factors in question. With respect to a sunset review of a suspended investigation, where the Department determines that good cause exists, the Department normally will conduct the sunset review consistent with its practice of examining likelihood under section 751(a) of the Act.

**III. Sunset Reviews in Countervailing Duty Proceedings**

*A. Determination of Likelihood of Continuation or Recurrence of a Countervailable Subsidy*

1. In General

In accordance with section 752(b)(1) of the Act, in determining whether revocation of a countervailing duty order or termination of a suspended countervailing duty investigation would be likely to lead to continuation or recurrence of a countervailable subsidy, the Department will consider—

(a) the net countervailable subsidy determined in the investigation and subsequent reviews, and

(b) whether any change in the program which gave rise to the net countervailable subsidy determined in the investigation and subsequent reviews has occurred that is likely to affect that net countervailable subsidy.

2. Basis for Likelihood Determination

Consistent with the SAA at 879, and the House Report at 56, the Department will make its determination of likelihood on an order-wide basis.

3. Continuation, Temporary Suspension, or Partial Termination of a Subsidy Program

a. In General

The SAA at 888, states that,

> Continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies. Temporary suspension or partial termination of a subsidy program also will be probative of continuation or recurrence of countervailable subsidies, absent significant evidence to the contrary.

*See also,* the Senate Report at 52.

Therefore, the Department normally will determine that revocation of a countervailing duty order or termination of a suspended investigation is likely to lead to continuation or recurrence of a countervailable subsidy where—

(a) a subsidy program continues;

(b) a subsidy program has been only temporarily suspended; or

(c) a subsidy program has been only partially terminated.

b. Exception

The SAA at 888–89, provides that, if companies have a long track record of not using a program, the mere availability of the program should not, by itself, indicate likelihood of continuation or recurrence of a countervailable subsidy. However, the SAA at 888, also provides that as long as a subsidy program continues to exist, the Department should not consider company- or industry-specific renunciations of countervailable subsidies, by themselves, as an indication that continuation or recurrence of countervailable subsidies is unlikely.

Therefore, where a company has a long track record of not using a program, including during the investigation, the Department normally will determine that the mere availability of the program does not, by itself, indicate likelihood of continuation or recurrence of a countervailable subsidy. In addition, where a subsidy program continues to exist, the Department normally will not consider company-specific or industry-specific renunciation of countervailable subsidies under that program, by themselves, as an indication that continuation or recurrence of a countervailable subsidy is unlikely.

4. Subsidies for Which Benefits Are Allocated Over Time

The SAA at 889, provides that, with respect to subsidies for which the benefits are allocated over time, such as grants, long-term loans, or equity infusions, the Department ''will consider whether the fully allocated

benefit stream is likely to continue after the end of the review, without regard to whether the program that gave rise to the long-term benefit continues to exist.''

Therefore, where the Department is examining a subsidy for which the benefits are allocated over time, the Department normally will determine that a countervailable subsidy will continue to exist when the benefit stream, as defined by the Department, will continue beyond the end of the sunset review, without regard to whether the program that gave rise to the long-term benefit continues to exist.

5. Elimination of a Subsidy Program or Exclusion of Subject Companies by the Foreign Government

The SAA at 888, states that,

> If the foreign government has eliminated a subsidy program, . . . [the Department] will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program. For example, programs eliminated through administrative action may be more likely to be reinstated than those eliminated through legislative action.

Therefore, where the foreign government has eliminated a subsidy program or changes a program to exclude subject companies, the Department will consider—

(a) the legal method by which the government eliminated the program, and

(b) whether the government is likely to reinstate the program,

in determining whether revocation of a countervailing duty order or termination of a suspended investigation is likely to lead to continuation or recurrence of a countervailable subsidy. The Department normally will determine that programs eliminated through administrative action are more likely to be reinstated than those eliminated through legislative action.

6. Treatment of Zero or De Minimis Rates

a. In General

Section 752(b)(4)(A) of the Act provides that a net countervailable subsidy determined in the investigation or subsequent reviews that is zero or *de minimis* shall not by itself require the Department to determine that revocation of a countervailing duty order or termination of a suspended investigation would not be likely to lead to continuation or recurrence of a countervailable subsidy.

Therefore, although the Department may consider the existence of a zero or *de minimis* countervailable subsidy rate in making its determination of likelihood, a zero or *de minimis* countervailable subsidy rate, in itself, will not require that the Department determine that continuation or recurrence of a countervailable subsidy is not likely. In accordance with section 752(b)(4)(B) of the Act and 19 CFR 351.106(c)(1), the Department will treat as *de minimis* any countervailable subsidy rate that is less than 0.5 percent *ad valorem* or the equivalent specific rate.

b. De Minimis Combined Benefits

The SAA at 889, and the House Report at 63, state that,

> [I]f the combined benefits of all programs considered by [the Department] for purposes of its likelihood determination have never been above *de minimis* at any time the order was in effect, and if there is no likelihood that the combined benefits of such programs would be above *de minimis* in the event of revocation or termination, [the Department] should determine that there is no likelihood of continuation or recurrence of countervailable subsidies.

Therefore, if the combined benefits of all programs considered by the Department for purposes of its likelihood determination have never been above *de minimis* at any time the order was in effect, and if there is no likelihood that the combined benefits of such programs would be above *de minimis* in the event of revocation or termination, the Department normally will determine that there is no likelihood of continuation or recurrence of countervailable subsidies. In accordance with section 752(b)(4)(B) of the Act and 19 CFR 351.106(c)(1), the Department will treat as *de minimis* any overall countervailable subsidy rate that is less than 0.5 percent *ad valorem* or the equivalent specific rate.

*B. Net Countervailable Subsidy That is Likely to Prevail*

1. In General

Section 752(b)(3) of the Act provides that the Department will provide to the Commission the net countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation is terminated. The SAA at 890, and the House Report at 64, provide that the Department normally will select a rate ''from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place.''

Therefore, except as provided in paragraph III.B.3, the Department normally will provide to the Commission the net countervailable subsidy that was determined in the final determination in the original investigation. In certain situations, the Department may provide to the Commission the net countervailable subsidy that was determined in the preliminary determination in the original investigation, *e.g.*, where the Department did not issue a final determination because the investigation was suspended and continuation was not requested. In addition, the Department normally will provide to the Commission a list of companies excluded from the order based on zero or *de minimis* rates, if any, or subsequently revoked from the order, if any.

In a sunset review of a countervailing duty order where the original investigation was conducted by Treasury, the Department normally will provide to the Commission the net countervailable subsidy (sometimes previously called the net bounty, subsidy, or grant) from the first final results of administrative review published in the **Federal Register** by the Department, where the net countervailable subsidy was first calculated on an *ad valorem* basis.

2. Determination of Net Countervailable Subsidy; Company-Specific Rates

Prior to enactment of the URAA, the Department calculated company-specific countervailable subsidy rates in the original investigation only where such rates were ''significantly different'' from the country-wide rate. *See* 19 CFR 355.20(d) (1995). Since enactment of the URAA, and in accordance with section 777A(e)(1) of the Act, the Department, where possible, calculates individual countervailable subsidy rates in an investigation for each known exporter or producer of the subject merchandise (*see* section 777A(e)(2) of the Act (providing for an exception to the calculation of individual rates where it is not practicable to do so because of the large number of exporters or producers involved in the investigation)).

Therefore, except as provided in paragraph III.B.3, where a company-specific countervailing duty rate was determined for a particular company in the original investigation, the Department normally will provide that rate to the Commission as the net countervailable subsidy that is likely to prevail for that company if the order is revoked or the suspended investigation is terminated. Specifically, the Department normally will provide the company-specific countervailing duty rate from the investigation for each company, where available, regardless of whether the rate was calculated using a

company's own information or was based on best information available or facts available. If no company-specific countervailing duty rate was determined for a particular company in the original investigation, because the company's rate was not ''significantly different'' from the country-wide rate, the company was not specifically investigated, or the company did not begin shipping until after the order was issued, except as provided in paragraph III.B.3, the Department normally will provide to the Commission the country-wide rate or all others rate determined in the original investigation as the net countervailable subsidy that is likely to prevail for that particular company if the order is revoked or the suspended investigation is terminated.

3. Adjustments to the Subsidy

As discussed in paragraph III.B.1, the Department normally will provide to the Commission the net countervailable subsidy that was determined in the original investigation. However, the purpose of the net countervailable subsidy in the context of sunset reviews is to provide the Commission with a rate which represents the countervailable rate that is likely to prevail if the order is revoked or the suspended investigation is terminated. Furthermore, section 752(b)(1)(B) of the Act provides that the Department will consider whether any change in the program which gave rise to the net countervailable subsidy determination in the investigation or subsequent reviews has occurred that is likely to affect the net countervailable subsidy. Consequently, although the SAA at 890, and the House Report at 64, provide that the Department normally will select a rate from the investigation, this rate may not be the most appropriate if, for example, the rate was derived (in whole or part) from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review.

Therefore, the Department may make adjustments to the net countervailable subsidy determined pursuant to paragraphs III.B.1 and III.B.2, including, but not limited to, the following:

(a) Where the Department has conducted an administrative review of the order, or suspension agreement, as applicable, and found that a program was terminated with no residual benefits and no likelihood of reinstatement, the Department normally will adjust the net countervailable subsidy rate determined in the original investigation to reflect the change. If, in an investigation, the Department found that a program had been terminated with no residual benefits subsequent to the period of investigation, the Department normally will consider this information in determining the net countervailable subsidy.

(b) The Department normally will not make adjustments to the net countervailable subsidy rate for programs that still exist, but were modified subsequent to the order, or suspension agreement, as applicable, to eliminate exports to the United States (or subject merchandise) from eligibility.

(c) Where the Department has conducted an administrative review of the order, or suspension agreement, as applicable, and found a new countervailable program, or found a program previously not used but subsequently found countervailable, that was included in the new subsidy rate for the administrative review, the Department normally will adjust the net countervailable subsidy rate determined in the original investigation to reflect the change.

(d) Where the Department has conducted an administrative review of the order, or suspension agreement, as applicable, and determined to increase the net countervailable subsidy rate for any reason, including as a result of the application of best information available or facts available, the Department may adjust the net countervailable subsidy rate determined in the original investigation to reflect the increase in the rate.

(e) Where the Department has conducted an administrative review of the order, or suspension agreement, as applicable, and found that a program is not countervailable based on sections 771(5B)(B), (C), or (D) of the Act, the Department normally will adjust the net countervailable subsidy rate determined in the original investigation to reflect the change. Also, where a subsidy is provided pursuant to a program that has been notified in accordance with Article 8.3 of the Subsidies Agreement (*see* section 771(5B)(E)(i) of the Act), the Department normally will adjust the net countervailable subsidy rate determined in the original investigation to reflect the change, unless the Department determines to treat the subsidy as countervailable based upon notification from the Trade Representative under section 771(5B)(E)(ii) of the Act.

(f) Where the Department has conducted an administrative review of the order, or suspension agreement, as applicable, and found that a program is not countervailable based on section 771(5B)(F) of the Act, the Department normally will adjust the net countervailable subsidy rate determined in the original investigation to reflect the change.

(g) Where the Department has not conducted an administrative review of the order, or suspension agreement, as applicable, subsequent to the investigation, except as provided in paragraph III.C, the Department normally will not make adjustments to the net countervailable subsidy rate determined in the original investigation.

4. Nature of the Countervailable Subsidy

Consistent with section 752(a)(6) of the Act, the Department will provide information to the Commission concerning the nature of a countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement.

*C. Consideration of Other Factors*

1. Programs Determined To Provide Countervailable Subsidies in Other Investigations or Reviews

Section 752(b)(2)(A) of the Act provides that if the Department determines that good cause is shown, the Department also will consider programs determined to provide countervailable subsidies in other investigations or reviews, but only to the extent that such programs—

(a) can potentially be used by the exporters or producers subject to the sunset review, and

(b) did not exist at the time that the countervailing duty order was issued or the suspension agreement accepted.

Therefore, the Department will consider such other programs in CVD sunset reviews if the Department determines that good cause to consider such other programs exists. The burden is on interested parties to provide information or evidence that would warrant consideration of the subsidy program in question. In addition, with respect to a sunset review of a suspended investigation, where the Department determines that good cause exists, the Department normally will conduct the sunset review consistent with its practice of examining likelihood under section 751(a) of the Act.

2. Programs Newly Alleged To Provide Countervailable Subsidies

Section 752(b)(2)(B) of the Act provides that if the Department determines that good cause is shown, the Department also will consider programs newly alleged to provide countervailable subsidies, but only to

the extent that the Department makes an affirmative countervailing duty determination with respect to such programs and with respect to the exporters or producers subject to the sunset review. The SAA at 889, states that,

[S]ubsidy allegations normally should be made in the context of [administrative] reviews * * *, and [the Department is not expected] to entertain frivolous allegations in . . . [sunset] reviews. However, where there have been no recent [administrative] reviews or where the alleged countervailable subsidy program came into existence after the most recently completed [administrative] review, [the Department] may consider new subsidy allegations in the context of a * * * [sunset] review.

Therefore, the Department will consider programs newly alleged to provide countervailable subsidies if the Department determines that good cause to consider such programs exists. Furthermore, the Department normally will consider a new subsidy allegation in the context of a sunset review only where information on such program was not reasonably available to domestic interested parties during the most recently completed administrative review or the alleged countervailable subsidy program came into existence after that administrative review. The burden is on interested parties to provide information or evidence that would warrant consideration of the subsidy program in question. In addition, with respect to a sunset review of a suspended investigation, where the Department determines that good cause exists, the Department normally will conduct the sunset review consistent with its practice of examining likelihood under section 751(a) of the Act.

[FR Doc. 98–10039 Filed 4–15–98; 8:45 am]
BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–549–801, A–412–801]**

### Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Amended Final Results of Antidumping Duty Administrative Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final court decision and amended final results of administrative reviews.

**SUMMARY:** On December 12, 1996, the United States Court of International Trade affirmed the Department of Commerce's final remand results affecting final assessment rates for the third administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. As there is now a final and conclusive court decision in these actions (with the exceptions of SKF GmbH, SKF Industrie S.p.A. and SKF Sverige AB which have filed appeals to the Court of Appeals for the Federal Circuit), we are amending our final results of reviews and we will instruct the U.S. Customs Service to liquidate entries subject to these reviews with the exception of those still under appeal.

**EFFECTIVE DATE:** April 16, 1998.

**FOR FURTHER INFORMATION CONTACT:** Greg Thompson or Jay Biggs, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0410 or (202) 482–1690.

**SUPPLEMENTARY INFORMATION:**

#### Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions in effect as of December 31, 1994. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations as codified at 19 CFR Part 353 (April 1, 1997).

#### Background

On July 26, 1993, the Department published its final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, covering the period May 1, 1991 through April 30, 1992 (*AFBs III*) (58 FR 39729). These final results were amended on August 9, 1993, September 30, 1993, December 15, 1993 and February 28, 1994 (*see* 58 FR 42288, 58 FR 51055, 58 FR 65576 and 59 FR 9469, respectively). The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). Subsequently, two domestic producers, the Torrington Company and Federal-Mogul, and a number of other interested parties filed lawsuits with the U.S. Court of International Trade (CIT) challenging the final results. These lawsuits were litigated at the CIT and the United States Court of Appeals for the Federal Circuit (CAFC). In the course of this litigation, the CIT and CAFC issued a number of orders and opinions, of which the following have resulted in changes to the antidumping margins calculated in AFBs III:

*Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 96–37, (February 13, 1996) with respect to France, Germany, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom;

*Koyo Seiko Co.* v. *United States*, Fed. Cir. Nos. 93–1525, 93–1534 (September 30, 1994) with respect to Japan;

*NSK Ltd. and NSK Corporation* v. *United States*, Slip Op. 94–175 (November 14, 1994) with respect to Japan;

*NSK Ltd. and NSK Corporation* v. *United States*, Slip Op. 94–181 (November 28, 1994) with respect to Japan;

*NSK Ltd.* v. *United States*, Slip Op. 96–125 (August 5, 1996) with respect to Japan;

*SKF USA Inc.* v. *United States*, Slip Op. 95–82 (May 4, 1995) with respect to Italy;

*SKF USA Inc.* v. *United States*, Slip Op. 96–13 (January 10, 1996) with respect to France;

*SKF USA Inc.* v. *United States*, Slip Op. 96–15 (January 16, 1996) with respect to Italy;

*SKF USA Inc.* v. *United States*, Slip Op. 96–16 (January 16, 1996) with respect to Sweden;

*FAG Kugelfischer Georg Schafer KgaA., FAG Italia S.p.A, FAG (U.K.) Limited, Barden Corporation Limited, FAG Bearings Corporation and The Barden Corporation* v. *United States*, Slip Op. 96–108 (July 10, 1996) with respect to Italy, Germany, and the United Kingdom;

*INA Walzlager Schaeffler KG and INA Bearing Company, Inc.* v. *United States*, Slip Op. 96–26 (January 29, 1996) with respect to Germany;

*SNR Roulements* v. *United States*, Slip Op. 98–6 (January 23, 1998) with respect to France;

*Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 96–193 (December 12, 1996)