

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 and using the secondary information in question.

(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.

(f) *Use of facts available in a sunset review.* Where the Secretary determines

to issue final results of sunset review on the basis of facts available, the Secretary normally will rely on:

(1) Calculated countervailing duty rates or dumping margins, as applicable, from prior Department determinations; and

(2) Information contained in parties' substantive responses to the Notice of Initiation filed under § 351.218(d)(3), consistent with section 752(b) or 752(c) of the Act, as applicable.

[62 FR 27379, May 19, 1997, as amended at 63 FR 13524, Mar. 20, 1998]

§ 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, or for the final results of a full sunset review, 50 days after the date of publication of the preliminary determination or results of review, as applicable, unless the Secretary alters the 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

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(iii) For the final results of an expedited sunset review, expedited antidumping 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 and a table of statutes, regulations, and cases cited.

(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 and a table of statutes, regulations, and cases cited.

(e) *Comments on adequacy of response and appropriateness of expedited sunset review—*(i) *In general.* Where the Secretary determines that respondent interested parties provided inadequate response to a Notice of Initiation (see

§ 351.218(e)(1)(ii)) and has notified the International Trade Commission as such under § 351.218(e)(1)(ii)(C), interested parties (and industrial users and consumer organizations) that submitted a complete substantive response to the Notice of Initiation under § 351.218(d)(3) may file comments on whether an expedited sunset review under section 751(c)(3)(B) of the Act and § 351.218(e)(1)(ii)(B) or § 351.218(e)(1)(ii)(C) is appropriate based on the adequacy of responses to the notice of initiation. These comments may not include any new factual information or evidence (such as supplementation of a substantive response to the notice of initiation) and are limited to five pages.

(ii) *Time limit for filing comments.* Comments on adequacy of response and

appropriateness of expedited sunset review must be filed not later than 70 days after the date publication in the FEDERAL REGISTER of the notice of initiation.

[62 FR 27379, May 19, 1997, as amended at 63 FR 13524, Mar. 20, 1998; 70 FR 62064, Oct. 28, 2005]

§ 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