

PARTS 300–350 [RESERVED]

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

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Subpart A—Scope, Definitions, the Record of Proceedings, Cash Deposits, Nonmarket Economy Antidumping Rates, All-Others Rate, and Respondent Selection

§ 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, Pub. L. 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. 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. 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.

(b) *Definitions.* (1) *Act.* “Act” means the Tariff Act of 1930, as amended.

(2) *Administrative review.* “Administrative review” means a review under section 751(a)(1) of the Act.

(3) *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: Corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretary will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. The Secretary will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

(4) *Aggregate basis.* “Aggregate basis” means the calculation of a country-wide subsidy rate based principally on information provided by the foreign government.

(5) *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.

(6) *APO.* “APO” means an administrative protective order described in section 777(c)(1) of the Act.

(7) *Applicant.* “Applicant” means a representative of an interested party that has applied for access to business proprietary information under an administrative protective order.

(8) *Article 4/Article 7 review.* “Article 4/Article 7 review” means a review under section 751(g)(2) of the Act.

(9) *Article 8 violation review*. “Article 8 violation review” means a review under section 751(g)(1) of the Act.

(10) *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.

(11) *Changed circumstances review*. “Changed circumstances review” means a review under section 751(b) of the Act.

(12) *Consumed in the production process*. Inputs “consumed in the production process” are inputs physically incorporated, energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the product.

(13) *Cumulative indirect tax*. “Cumulative indirect tax” means a multi-staged tax levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production.

(14) *Days*. Deadlines and time limits for submissions with the Secretary that reference a number of “days,” will generally mean calendar days. If certain deadlines or time limits are intended to apply to business days instead, which are Monday through Friday, except Federal holidays, then the applicable regulatory provisions implementing such deadlines or time limits will explicitly indicate the use of the business day alternative.

(15) *Department*. “Department” means the United States Department of Commerce.

(16) *Direct tax*. “Direct tax” means a tax on wages, profits, interests, rents, royalties, and all other forms of income, a tax on the ownership of real property, or a social welfare charge.

(17) *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.

(18) *Expedited antidumping review*. “Expedited antidumping review” means a review under section 736(c) of the Act.

(19) *Expedited sunset review*. “Expedited sunset review” means an expe-

ditied sunset review conducted by the Department where respondent interested parties provide inadequate responses to a notice of initiation under section 751(c)(3)(B) of the Act and § 351.218(e)(1)(ii).

(20) *Export insurance*. “Export insurance” includes, but is not limited to, insurance against increases in the cost of exported products, nonpayment by the customer, inflation, or exchange rate risks.

(21) *Factual information*. “Factual information” means:

(i) Evidence, including statements of fact, documents, and data submitted either in response to initial and supplemental questionnaires, or, to rebut, clarify, or correct such evidence submitted by any other interested party;

(ii) Evidence, including statements of fact, documents, and data submitted either in support of allegations, or, to rebut, clarify, or correct such evidence submitted by any other interested party;

(iii) Publicly available information submitted to value factors under § 351.408(c) or to measure the adequacy of remuneration under § 351.511(a)(2), or, to rebut, clarify, or correct such publicly available information submitted by any other interested party;

(iv) Evidence, including statements of fact, documents and data placed on the record by the Department, or, evidence submitted by any interested party to rebut, clarify or correct such evidence placed on the record by the Department; and

(v) Evidence, including statements of fact, documents, and data, other than factual information described in paragraphs (b)(21)(i)–(iv) of this section, in addition to evidence submitted by any other interested party to rebut, clarify, or correct such evidence.

(22) *Fair value*. “Fair value” is a term used during an antidumping investigation, and is an estimate of normal value.

(23) *Firm*. For purposes of subpart E (Identification and Measurement of Countervailable Subsidies), “firm” is used to refer to the recipient of an alleged countervailable subsidy, including any individual, company, partnership, corporation, joint venture, association, organization, or other entity.

(24) *Full sunset review.* “Full sunset review” means a full sunset review conducted by the Department under section 751(c)(5) of the Act where both domestic interested parties and respondent interested parties provide adequate response to a notice of initiation under section 751(c)(3)(B) of the Act and §§ 351.218(e)(1)(i) and 351.218(e)(1)(ii).

(25) *Government-provided.* “Government-provided” is a shorthand expression for an act or practice that is alleged to be a countervailable subsidy. The use of the term “government-provided” is not intended to preclude the possibility that a government may provide a countervailable subsidy indirectly in a manner described in section 771(5)(B)(iii) of the Act (indirect financial contribution).

(26) *Import charge.* “Import charge” means a tariff, duty, or other fiscal charge that is levied on imports, other than an indirect tax.

(27) *Importer.* “Importer” means the person by whom, or for whose account, subject merchandise is imported.

(28) *Indirect tax.* “Indirect tax” means a sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, a border tax, or any other tax other than a direct tax or an import charge.

(29) *Interested party.* For the purpose of submitting an application for APO access (Form ITA-367), “Interested Party” means:

- (i) A foreign manufacturer, producer, or exporter of subject merchandise,
- (ii) The United States importer of subject merchandise,
- (iii) A trade or business association a majority of the members of which are producers, exporters, or importers of subject merchandise,
- (iv) The government of a country in which subject merchandise is produced or manufactured or from which such merchandise is exported,
- (v) A manufacturer, producer, or wholesaler in the United States of a domestic like product,
- (vi) A certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product,

(vii) A trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States,

(viii) An association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) of section 771(9) of the Act with respect to a domestic like product, and

(ix) A coalition or trade association as described in section 771(9)(G) of the Act.

(30) *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:

- (i) Notice of termination of investigation,
- (ii) Notice of rescission of investigation,
- (iii) Notice of a negative determination that has the effect of terminating the proceeding, or
- (iv) An order.

(31) *Loan.* “Loan” means a loan or other form of debt financing, such as a bond.

(32) *Long-term loan.* “Long-term loan” means a loan, the terms of repayment for which are greater than one year.

(33) *New shipper review.* “New shipper review” means a review under section 751(a)(2) of the Act.

(34) *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.

(35) *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 if the Secretary determines, based on an evaluation of all of the circumstances particular to the sales in question, that such sales or transactions have characteristics that are extraordinary for the market in question. Examples of sales that the Secretary might consider as being outside the ordinary course of trade are 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.

(36) *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.

(37) *Person*. "Person" includes any interested party as well as any other individual, enterprise, or entity, as appropriate.

(38) *Price adjustment*. "Price adjustment" means a change in the price charged for subject merchandise or the foreign like product, such as a discount, rebate, or other adjustment, including, under certain circumstances, a change that is made after the time of sale (see § 351.401(c)), that is reflected in the purchaser's net outlay.

(39) *Prior-stage indirect tax*. "Prior-stage indirect tax" means an indirect tax levied on goods or services used directly or indirectly in making a product.

(40) *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:

- (i) Dismissal of petition,
- (ii) Rescission of initiation,
- (iii) Termination of investigation,
- (iv) A negative determination that has the effect of terminating the proceeding,
- (v) Revocation of an order, or
- (vi) Termination of a suspended investigation.

(41) *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.

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

(43) *Sale*. A "sale" includes a contract to sell and a lease that is equivalent to a sale.

(44) *Secretary*. "Secretary" means the Secretary of Commerce or a designee. The Secretary has delegated to the Assistant Secretary for Enforcement and Compliance the authority to make determinations under title VII of the Act and this part.

(45) *Section 753 review*. "Section 753 review" means a review under section 753 of the Act.

(46) *Section 762 review*. "Section 762 review" means a review under section 762 of the Act.

(47) *Segment of proceeding—(i) 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.

(ii) *Examples*. An antidumping or countervailing duty investigation or a review of an order or suspended investigation, or a scope inquiry under § 351.225, each would constitute a segment of a proceeding.

(48) *Short-term loan*. "Short-term loan" means a loan, the terms of repayment for which are one year or less.

(49) *Sunset review*. "Sunset review" means a review under section 751(c) of the Act.

(50) *Suspension of liquidation*. "Suspension of liquidation" refers to a suspension of liquidation ordered by the Secretary under the authority of title VII of the Act, the provisions of this Part, or section 516a(g)(5)(C) of the Act, or by a court of the United States in a lawsuit involving action taken, or not taken, by the Secretary under title VII of the Act or the provisions of this part.

(51) *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.

(52) *URAA*. “URAA” means the Uruguay Round Agreements Act.

(53) *U.S. Customs and Border Protection*. *U.S. Customs and Border Protection* means United States Customs and Border Protection of the United States Department of Homeland Security.

[73 FR 3640, Jan. 22, 2008, as amended at 78 FR 21254, Apr. 10, 2013; 81 FR 15645, Mar. 24, 2016; 89 FR 20832, Mar. 25, 2024]

§ 351.103 Central Records Unit and Administrative Protective Order and Dockets Unit.

(a) Enforcement and Compliance’s Central Records Unit maintains a Public File Room in Room B8024, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. The office hours of the Public File Room are between 8:30 a.m. and 5 p.m. Eastern Time on business days. Visitors to the Public File Room should consult the ACCESS website at <https://access.trade.gov> for information regarding in-person visits. Among other things, the Central Records Unit is responsible for maintaining an official and public record for each anti-dumping and countervailing duty proceeding (see § 351.104).

(b) Enforcement and Compliance’s Administrative Protective Order and Dockets Unit (APO/Dockets Unit) is located in Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. The office hours of the APO/Dockets Unit are between 8:30 a.m. and 5 p.m. Eastern Time on business days. Visitors to the APO/Dockets Unit should consult the ACCESS website at <https://access.trade.gov> for information regarding in-person manual filings. Among other things, the APO/Dockets Unit is responsible for receiving submissions from interested parties, issuing administrative protective orders (APOs), maintaining the APO service list and the public service list as provided for in paragraph (d) of this section, releasing business proprietary information under APO, and conducting APO violation investigations. The APO/Dockets Unit also is the contact point for questions and concerns regarding claims for busi-

ness proprietary treatment of information and proper public versions of submissions under §§ 351.105 and 351.304.

(c) *Filing of documents with the Department*. No document will be considered as having been received by the Secretary unless it is electronically filed in accordance with § 351.303(b)(2)(i) or, where applicable, in accordance with § 351.303(b)(2)(ii), it is manually submitted to the Enforcement and Compliance’s APO/Dockets Unit in Room 18022 and is stamped with the date, and, where necessary, the time, of receipt. A manually filed document must be submitted with a cover sheet, in accordance with § 351.303(b)(3).

(d) The APO/Dockets Unit will maintain and make available a public service list for each segment of a proceeding. The service list for an application for a scope ruling is described in § 351.225(n). The service list for a request for a circumvention inquiry is described in § 351.226(n).

(1) With the exception of a petitioner filing a petition in an investigation pursuant to § 351.202, an interested party filing a scope ruling application pursuant to § 351.225(c), an interested party filing a request for a circumvention inquiry pursuant to § 351.226(c), and those relevant parties identified by U.S. Customs and Border Protection in a covered merchandise referral pursuant to § 351.227, all persons wishing to participate in a segment of a proceeding must file an entry of appearance. The entry of appearance must identify the name of the interested party, how that party qualifies as an interested party under § 351.102(b)(29) and section 771(9) of the Act, and the name of the firm, if any, representing the interested party in that particular segment of the proceeding. All persons who file an entry of appearance and qualify as an interested party will be included in the public service list for the segment of the proceeding in which the entry of appearance is submitted. The entry of appearance may be filed as a cover letter to an application for APO access. If the representative of the interested party is not requesting access to business proprietary information under APO, the entry of appearance must be filed separately from any

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other document filed with the Department. If the interested party is a coalition or association as defined in subparagraph (A), (E), (F) or (G) of section 771(9) of the Act, the entry of appearance must identify all of the members of the coalition or association.

(2) Each interested party that asks to be included on the public service list for a segment of a proceeding must designate a person to receive service of documents filed in that segment.

[76 FR 39274, July 6, 2011, as amended at 80 FR 36473, June 25, 2015; 86 FR 52371, Sept. 20, 2021; 88 FR 67077, Sept. 29, 2023]

§ 351.104 Record of proceedings.

(a) *Official record*—(1) *In general.* The Secretary will maintain 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, documents 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. For a scope, circumvention, or covered merchandise inquiry pertaining to companion antidumping and countervailing duty orders conducted on the record of the antidumping duty segment of the proceeding, pursuant to §§ 351.225, 352.226, and 351.227, the record of the antidumping duty segment of the proceeding normally will be the official record.

(2) *Material rejected.* (i) The Secretary, in making any determination under this part, will not use factual information, written argument, or other material that the Secretary rejects.

(ii) The official record will include a copy of a rejected document, solely for purposes of establishing and documenting the basis for rejecting the doc-

ument, if the document was rejected because:

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

(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 rejects as untimely filed or any unsolicited questionnaire response unless the response is a voluntary response accepted under § 351.109(h) (see § 351.302(d)).

(3) *Filing requirements for documents not originating with the Department*—(i) *In general.* Documents not originating with the Department must be placed on the official record for the documents to be considered by the Secretary in the Secretary's analysis and determinations. With the exception of the sources enumerated in paragraph (a)(3)(ii) of this section, mere citations to hyperlinks, website Uniform Resource Locators (URLs), or other sources of information do not constitute placement of the information from those sources on the official record. Unless the exceptions of paragraph (a)(3)(ii) apply, the filing and timing requirements of § 351.301 apply to such information.

(ii) *Exceptions for publicly available documents not originating with the Department.* The following publicly available sources of information not originating with the Department will be considered by the Secretary in the Secretary's analysis and determinations when fully cited by submitting parties without the requirement that the information sources be placed on the official record: United States statutes and regulations; published United States legislative history; United States court decisions and orders; FEDERAL REGISTER notices and determinations;

Commission reports adopted by reference in the FEDERAL REGISTER; dictionary definitions; international agreements identified in § 351.101(a) and dispute settlement determinations arising out of those international agreements. The Secretary may decline to consider sources of information in its analysis or determination that are not cited in full.

(4) *Filing requirements for proprietary, privileged, and classified information.* When lawfully permitted, all proprietary, privileged, and classified information, including documents originating with the Department containing such information from another segment of the same proceeding, must be placed on the official record in their entirety for the Secretary to consider that information in its analysis and determinations, and the filing and timing restrictions of § 351.301 apply to such information.

(5) *Notices and determinations originating with the Department and published in the FEDERAL REGISTER.* All notices and determinations originating with the Department and published in the FEDERAL REGISTER may be cited by parties in submissions for consideration by the Secretary without the requirement that the notice or determination be placed on the official record, as long as those notices and determinations are cited in full. The Secretary may decline to consider notices or determinations that are not cited in full. Section 351.301 does not apply to FEDERAL REGISTER notices and determinations.

(6) *Public versions of certain unpublished documents originating with the Department which may always be referenced by citation without placing the information on the record.* Public versions of the following documents originating with the Department derived from other segments and proceedings may be cited in submissions for consideration by the Secretary without being placed on the record, as long as those documents are cited in full. In providing a citation to a document originating with the Department, the submitter must explain in the text of the submitted document the factual and legal reasons for which the submitter is citing the document and an Enforcement and Compliance

Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS) barcode number associated with the document must be included as part of the citation. If an ACCESS barcode number is not included in the citation or is incorrectly transcribed, or the document is not cited in full, the Secretary may decline to consider the cited decision document in its analysis or determination. The timing and filing restrictions of § 351.301 shall not apply to these documents:

(i) Preliminary and final issues and decision memoranda issued in investigations pursuant to §§ 351.205 and 351.210;

(ii) Preliminary and final issues and decision memoranda issued in administrative reviews, pursuant to § 351.213;

(iii) Preliminary and final issues and decision memoranda issued in new shipper reviews, pursuant to § 351.214;

(iv) Preliminary and final issues and decision memoranda in changed circumstances reviews, pursuant to § 351.216;

(v) Preliminary and final issues and decision memoranda in sunset reviews, pursuant to § 351.218;

(vi) Preliminary and final decision memoranda issued in scope inquiries pursuant to § 351.225, circumvention inquiries pursuant to § 351.226, and covered merchandise inquiries pursuant to § 351.227;

(vii) Draft and final redeterminations on remand;

(viii) Draft and final redeterminations issued pursuant to section 129 of the Uruguay Round Agreements Act;

(ix) Initiation decision documents, such as initiation checklists;

(x) New subsidy allegation memoranda;

(xi) Scope memoranda issued in an investigation; and

(xii) Post-preliminary determination or results memoranda addressing issues for the first time in the period of time between preliminary and final determinations or results.

(7) *Special rules for public versions of documents originating with the Department with no associated ACCESS barcode numbers.* Public versions of documents originating with the Department in other segments or proceedings under paragraph (a)(6)(iii) through (xii) of

this section but not associated with an ACCESS barcode number, including documents issued before the implementation of ACCESS, must be submitted on the record in their entirety to be considered by the Secretary in its analysis and determinations and are subject to the timing and filing restrictions of § 351.301. Preliminary and final issues and decision memoranda issued by the Secretary in investigations and administrative reviews and not associated with an ACCESS barcode number, including those issued before the implementation of ACCESS, pursuant to §§ 351.205, 210 and 213 may be cited in full without placing the memoranda on the record.

(b) *Public record.* The Secretary will maintain 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.

[62 FR 27379, May 19, 1997, as amended at 76 FR 39274, July 6, 2011; 88 FR 67077, Sept. 29, 2023; 89 FR 20832, Mar. 25, 2024; 89 FR 101756, Dec. 16, 2024]

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

(a) *Introduction.* There are four categories of information in an anti-dumping 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 that, although designated as business proprietary by the person submitting it, is in a form that cannot be associated with or otherwise used to identify activities of a particular person or that 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 percent *ad valorem*, or the equivalent specific rate.

(2) *Assessment of antidumping duties.* The Secretary will instruct U.S. Customs and Border Protection 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.

§ 351.107 Cash deposit rates; producer/exporter combination rates.

(a) *Introduction.* Sections 703(d)(1)(B), 705(d), 733(d)(1)(B), and 735(c) of the Act direct the Secretary to order the posting of cash deposits, as determined in preliminary and final determinations of antidumping and countervailing duty investigations, and additional provisions of the Act, including section 751, direct the Secretary to establish a cash deposit rate in accordance with various reviews. This section covers the establishment of cash deposit rates

and the instructions which the Secretary issues to U.S. Customs and Border Protection to collect those cash deposits.

(b) *In general.* The Secretary will instruct U.S. Customs and Border Protection to suspend liquidation of merchandise subject to an antidumping duty or countervailing duty proceeding and apply cash deposit rates determined in that proceeding to all imported merchandise for which a cash deposit rate was determined by the Secretary in proportion to the estimated value of the merchandise as reported to U.S. Customs and Border Protection on an *ad valorem* basis.

(c) *Exceptions—(1) Application of cash deposit rates on a per-unit basis.* If the Secretary determines that the information normally used to calculate an *ad valorem* cash deposit rate is not available or the use of an *ad valorem* cash deposit rate is otherwise not appropriate, the Secretary may instruct U.S. Customs and Border Protection to apply the cash deposit rate on a per-unit basis.

(2) *Application of cash deposit rates to producer/exporter combinations.* The Secretary may instruct U.S. Customs and Border Protection to apply a determined cash deposit rate only to imported merchandise both produced by an identified producer and exported by an identified exporter if the Secretary determines that such an application is appropriate. Such an application is called a producer/exporter combination.

(i) *Example.* Exporter A exports to the United States subject merchandise produced by Producers W, X, and Y. In such a situation, the Secretary may establish a cash deposit rate applied to Exporter A that is limited to merchandise produced by Producers W, X, and Y. If Exporter A begins to export subject merchandise produced by Producer Z, that cash deposit rate would not apply to subject merchandise produced by Producer Z.

(ii) *In general.* The Secretary will instruct U.S. Customs and Border Protection to apply a cash deposit rate to a producer/exporter combination or combinations when the cash deposit rate is determined as follows:

(A) Pursuant to a new shipper review, in accordance with section 751(a)(2)(B) of the Act and § 351.214;

(B) Pursuant to an antidumping investigation of merchandise from a non-market economy country, in accordance with sections 733 and 735 of the Act and §§ 351.205 and 210, for merchandise exported by an examined exporter;

(C) Pursuant to scope, circumvention, and covered merchandise segments of the proceeding, in accordance with §§ 351.225(m), 351.226(m) and 351.227(m), when the Secretary makes a segment-specific determination on the basis of a producer/exporter combination; and

(D) Pursuant to additional segments of a proceeding in which the Secretary determines that the application of a cash deposit rate to a producer/exporter combination is warranted based on facts on the record.

(3) *Exclusion from an antidumping or countervailing duty order—(i) Preliminary determinations.* In general, in accordance with sections 703(b) and 733(b) of the Act, if the Secretary makes an affirmative preliminary antidumping or countervailing duty determination and the Secretary preliminarily determines an individual weighted-average dumping margin or individual net countervailable subsidy rate of zero or *de minimis* for an investigated exporter or producer, the exporter or producer will not be excluded from the preliminary determination or the investigation. However, the Secretary will not instruct U.S. Customs and Border Protection to suspend liquidation of entries or collect cash deposits on the merchandise produced and exported from the producer/exporter combinations examined in the investigation and identified in the FEDERAL REGISTER, as the investigated combinations will not be subject to provisional measures under sections 703(d) or 733(d) of the Act.

(ii) *Final determinations.* In general, in accordance with sections 705(a), 735(a), 706(a), and 736(a) of the Act, if the Secretary makes an affirmative final determination, issues an antidumping or countervailing duty order and determines an individual weighted-average dumping margin or individual net countervailable subsidy rate of zero or

de minimis for an investigated producer or exporter, the Secretary will exclude from the antidumping or countervailing duty order only merchandise produced and exported in the producer/exporter combinations examined in the investigation and identified in the FEDERAL REGISTER. An exclusion applicable to a producer/exporter combination shall not apply to resellers. Excluded producer/exporter combinations may include transactions in which the exporter is both the producer and exporter, transactions in which the producer's merchandise has been exported to the United States through multiple exporters individually examined in the investigation, and transactions in which the exporter has sourced from multiple producers identified in the investigation.

(iii) *Example.* If during the period of investigation, Exporter A exports to the United States subject merchandise produced by Producer X, based on an examination of Exporter A the Secretary may determine that the dumping margins with respect to the examined merchandise are *de minimis*. In that case, the Secretary would normally exclude only subject merchandise produced by Producer X and exported by Exporter A. If Exporter A began to export subject merchandise produced by Producer Y, that merchandise would be subject to the antidumping duty order.

(4) *Certification requirements.* If the Secretary determines that parties must maintain or provide a certification in accordance with § 351.228, the Secretary may instruct U.S. Customs and Border Protection to apply a cash deposit requirement that is based on the facts of the case and effectuates the administration and purpose of the certification.

(d) *The antidumping duty order cash deposit hierarchies—(1) In general.* If the Secretary has not previously established a combination cash deposit rate under paragraph (c)(2) of this section for the producer and exporter in question, the following will apply:

(i) *A market economy country proceeding.* In a proceeding covering merchandise produced in a market economy country:

(A) If the Secretary has established a current cash deposit rate for the exporter of the subject merchandise, the Secretary will instruct U.S. Customs and Border Protection to apply the cash deposit rate established for the exporter to entries of the subject merchandise;

(B) If the Secretary has not established a current cash deposit rate for the exporter, but the Secretary has established a current cash deposit rate for the producer of the subject merchandise, the Secretary will instruct U.S. Customs and Border Protection to apply the cash deposit rate established for the producer of the subject merchandise to entries of the subject merchandise; and

(C) If the Secretary has not established a current cash deposit rate for either the producer or the exporter of the subject merchandise, the Secretary will instruct U.S. Customs and Border Protection to apply the all-others rate determined in the investigation to entries of the subject merchandise, pursuant to section 735(c) of the Act and § 351.109(f).

(ii) *A nonmarket economy country proceeding.* In a proceeding covering merchandise originating from a nonmarket economy country:

(A) If the Secretary has established a current separate cash deposit rate for the exporter of the subject merchandise, the Secretary will instruct U.S. Customs and Border Protection to apply the cash deposit rate for the exporter to entries of the subject merchandise;

(B) If the Secretary has not established a current separate cash deposit rate for an exporter of the subject merchandise, the Secretary will instruct U.S. Customs and Border Protection to apply the cash deposit rate determined by the Secretary for the nonmarket economy entity to entries of the subject merchandise, pursuant to § 351.108(b); and

(C) If the entries of subject merchandise were resold to the United States through a third-country reseller, the Secretary will normally instruct U.S. Customs and Border Protection to apply the current separate cash deposit

rate applicable to the nonmarket economy country exporter (or the applicable producer/exporter combination, if warranted) that supplied the subject merchandise to the reseller to those entries of the subject merchandise.

(2) *Exception.* If the Secretary determines that an application of cash deposit rates other than that described in paragraph (d)(1) of this section to particular producers or exporters is warranted, the Secretary may instruct U.S. Customs and Border Protection to use an alternative methodology in applying those cash deposit rates to entries of subject merchandise.

(e) *The countervailing duty order cash deposit hierarchy—(1) In general.* If the Secretary has not previously established a combination cash deposit rate under paragraph (c)(2) of this section for the producer and exporter in question and the exporter and producer have differing cash deposit rates, the following will apply:

(i) If the Secretary has established current cash deposit rates for both the producer and the exporter of the subject merchandise, the Secretary will instruct U.S. Customs and Border Protection to apply the higher of the two rates to the entries of subject merchandise;

(ii) If the Secretary has established a current cash deposit rate for the producer but not the exporter of the subject merchandise, the Secretary will instruct U.S. Customs and Border Protection to apply the producer's cash deposit rate to entries of subject merchandise;

(iii) If the Secretary has established a current cash deposit rate for the exporter but not the producer of the subject merchandise, the Secretary will instruct U.S. Customs and Border Protection to apply the exporter's cash deposit rate to entries of subject merchandise; and

(iv) If the Secretary has not established current cash deposit rates for either the producer or the exporter of the subject merchandise, the Secretary will instruct U.S. Customs and Border Protection to apply the all-others rate determined in the investigation pursuant to section 705(c)(5) of the Act and § 351.109(f) to the entries of subject merchandise.

(2) *Exception.* If the Secretary determines that an application of cash deposit rates other than that described in paragraph (e)(1) of this section to particular producers or exporters is warranted, the Secretary may instruct U.S. Customs and Border Protection to use an alternative methodology in applying those cash deposit rates to the entries of subject merchandise.

(f) *Effective dates for amended preliminary and final determinations and results of review upon correction of a ministerial error.* If the Secretary amends an agency determination in accordance with sections 703, 705(e), 733 and 735(e) of the Act and § 351.224 (e) through (g):

(1) If the Secretary amends a preliminary or final determination in an investigation for a ministerial error and the amendment increases the dumping margin or countervailing duty rate, the new cash deposit rate will be effective to entries made on or after the date of publication of the amended determination;

(2) If the Secretary amends a preliminary or final determination in an investigation for a ministerial error and the amendment decreases the dumping margin or countervailing duty rate, the new cash deposit rate will be retroactive to the date of publication of the original preliminary or final determination, as applicable;

(3) If the Secretary amends the final results of an administrative review pursuant to a ministerial error, the effective date of the amended cash deposit rate will be retroactive to entries following the date of publication of the original final results of administrative review regardless of whether the anti-dumping duty margin or countervailing duty rate increases or decreases; and

(4) If the Secretary amends the final results of an investigation or administrative review pursuant to litigation involving alleged or disputed ministerial errors, the effective date of the amended cash deposit rate may differ from the effective dates resulting from the application of paragraphs (f)(1) through (3) of this section and normally will be identified in a FEDERAL REGISTER notice.

[89 FR 101757, Dec. 16, 2024]

§ 351.108 Rates for entities exporting merchandise from nonmarket economies in antidumping proceedings.

(a) *Introduction*—(1) *The nonmarket economy entity.* When the Secretary determines that a country is a nonmarket economy country in an antidumping proceeding pursuant to section 771(18) of the Act, the Secretary may determine that all entities located in that nonmarket economy country are subject to government control and thus part of a single, government-controlled entity, called the nonmarket economy entity.

(2) *The nonmarket economy entity rate.* All merchandise from the nonmarket economy exported to the United States and subject to an antidumping proceeding by entities in the nonmarket economy determined by the Secretary on the basis of record information to be part of the government-controlled entity may be assigned the antidumping cash deposit or assessment rate applied to the government-controlled entity. That rate is called the nonmarket economy entity rate.

(3) *Entities in third countries owned or controlled by the nonmarket economy government.* If a nonmarket economy government has direct ownership or control, in whole or in part, of an entity located in a third country and that entity exports subject merchandise to the United States, the Secretary may determine on the basis of record information that such an entity is part of the government-controlled entity and assign that entity the nonmarket economy entity rate.

(b) *Separate rates.* An entity exporting merchandise to the United States from a nonmarket economy may receive its own rate, separate from the nonmarket economy entity rate, if the Secretary determines that the exporter has demonstrated that it operates certain activities sufficiently independent from nonmarket economy government control to justify the application of a separate rate. In determining whether an entity operates certain activities sufficiently independent from government control to receive a separate rate, the Secretary will normally consider the following:

(1) *Nonmarket economy government ownership and control in the nonmarket economy*—(i) *Government control through ownership.* When a nonmarket economy government, at a national, provincial, or other level, holds an ownership share of an entity located in the nonmarket economy, either directly or indirectly, the level of ownership and other factors may indicate that the government exercises or has the potential to exercise control over an entity's general operations. No separate rate will be applied when the nonmarket economy government either directly or indirectly holds:

(A) A majority ownership share (over fifty percent ownership) of an entity; or

(B) An ownership interest in the entity of fifty percent or less and any one of the following criteria applies:

(1) The government's ownership share provides it with a disproportionately larger degree of influence or control over the entity's production, commercial, and export decisions than the ownership share would normally entail, and the Secretary determines that the degree of influence or control is significant;

(2) The government has the authority to veto the entity's production, commercial and export decisions;

(3) Officials, employees, government-appointed or government-controlled labor union members, representatives of the government, or their family members have been appointed as officers or managers of the entity, members of the board of directors, or other governing authorities in the entity that have the ability to make or influence production, commercial and export decisions for the entity; or

(4) The entity is obligated by law or its foundational documents, such as articles of incorporation, or other *de facto* requirements to maintain one or more officials, employees, government-appointed or government-controlled labor union members, or representatives of the government as officers or managers, members of the board of directors, or other governing authorities in the entity that have the ability to make or influence production, commercial and export decisions for the entity.

(ii) *Absence of de jure government control.* If an entity demonstrates that neither § 351.108(b)(1)(i)(A) nor (B) applies to the entity, the entity must then demonstrate that the government has no control in law (*de jure*) of the entity's export activities. The following criteria may indicate the lack of government *de jure* control of the entity's export activities:

(A) The absence of a legal requirement that one or more officials, employees, government-appointed or government-controlled labor union members, or representatives of the government serve as officers or managers of the entity, members of the board of directors, or other governing authorities in the entity that make or influence export activity decisions;

(B) The absence of restrictive stipulations by the government associated with an entity's business and export licenses;

(C) Legislative enactments decentralizing government control of entities; and

(D) Other formal measures by the government decentralizing control of companies.

(iii) *Absence of de facto government control.* If the entity demonstrates that § 351.108(b)(1)(i)(A) and (B) and (b)(1)(ii) do not apply to the entity, the entity must then demonstrate that the government has no control in fact (*de facto*) of the entity's export activities. The following criteria may indicate *de facto* government control of the entity's export activities:

(A) Whether the entity maintains or must maintain one or more officials, employees, representatives of the government, or their family members as officers or managers, members of the board of directors, or other governing authorities in the entity which have the ability to make or influence export activity decisions;

(B) Whether export prices are set by or are subject to the approval of a government agency;

(C) Whether the entity has authority to negotiate and sign contracts and other agreements without government involvement;

(D) Whether the entity has autonomy from the government in making deci-

sions regarding the selection of its management;

(E) Whether the entity retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses; and

(F) Whether there is any additional evidence on the record suggesting that the government has direct or indirect influence over the entity's export activities.

(2) *Nonmarket economy government ownership or control of an entity located in a third country.* If the Secretary determines that a nonmarket economy government owns or controls, in whole or in part, an entity located in a third country, the Secretary may determine on the basis of record information that the entity should be assigned the nonmarket economy entity rate or that the entity should be granted a separate rate.

(c) *Entities wholly owned by foreign entities incorporated and headquartered in a market economy.* In general, if the Secretary determines based on information submitted in a separate rate application or certification that an entity exporting merchandise subject to a nonmarket economy country antidumping proceeding is wholly owned by a foreign entity and both incorporated and headquartered in a market economy country or countries, then the Secretary will consider the entity independent from control of the nonmarket economy government and an analysis under paragraph (b) of this section will not be necessary.

(d) *Separate rate applications and certifications.* In order to demonstrate separate rate eligibility, an entity subject to a nonmarket economy country antidumping proceeding will be required to timely submit a separate rate application, as made available by the Secretary, or a separate rate certification, as applicable. If no separate rate application or certification is timely submitted, the Secretary may apply the nonmarket economy entity rate to merchandise exported to the United States and subject to the nonmarket economy country antidumping proceeding. In filing a separate rate application or certification, the following applies:

(1) In an antidumping investigation, the entity will normally file a separate rate application on the record of the investigation no later than twenty-one days following publication of the notice of initiation in the FEDERAL REGISTER;

(2) In a new shipper review or an administrative review in which the entity has not been previously assigned a separate rate, the entity will normally file a separate rate application on the record no later than fourteen days following publication of the notice of initiation in the FEDERAL REGISTER. In both new shipper reviews and administrative reviews, documentary evidence of an entry of subject merchandise for which liquidation was suspended during the period of review must accompany the separate rate application.

(3) In an administrative review, if the entity has been previously assigned a separate rate in the proceeding, no later than fourteen days following publication of the notice of initiation in the FEDERAL REGISTER, the entity will instead file a certification on the record in which the entity certifies that it had entries of subject merchandise for which liquidation was suspended during the period of review and that it otherwise continues to meet the criteria for obtaining a separate rate. If the Secretary determined in a previous segment of the proceeding that certain exporters and producers should be treated as a single entity for purposes of the antidumping proceeding, then a certification filed under this paragraph must identify and certify that that the certification applies to all of the companies comprising that single entity.

(e) *Examined respondents and questionnaire responses.* Entities that submit separate rate applications or certifications and are subsequently selected to be an examined respondent in an investigation or review by the Secretary must fully respond to the Secretary's questionnaires and participate in the antidumping proceeding in order to be eligible for separate rate status.

[89 FR 101758, Dec. 16, 2024]

§ 351.109 Selection of examined respondents; single-country subsidy rate; calculating an all-others rate; calculating rates for unexamined respondents; voluntary respondents.

(a) *Introduction.* Sections 777A(c)(2) and 777A(e)(2)(A) of the Act provide that when the Secretary determines in an antidumping or countervailing duty investigation or administrative review that it is not practicable to determine individual dumping margins or countervailable subsidy rates for all potential respondents, the Secretary may determine individual dumping margins or countervailable subsidy rates for a reasonable number of exporters or producers using certain criteria set out in the Act. This section sets forth those criteria, describes the methodology the Secretary generally applies to select examined producers and exporters, and provides the means by which the Secretary determines the "all-others rate" set forth in sections 705(c)(5) and 735(c)(5) of the Act, separate rates in nonmarket economy antidumping proceedings, and review-specific margins or rates in administrative reviews. This section also addresses the treatment of voluntary respondents in accordance with section 782(a) of the Act.

(b) *Examining each known exporter or producer when practicable.* In an investigation or administrative review, the Secretary will determine, where practicable, an individual weighted-average dumping margin or individual countervailable subsidy rate for each known exporter or producer of the subject merchandise.

(c) *Limiting exporters or producers examined—(1) In general.* If the Secretary determines in an investigation or administrative review that it is not practicable to determine individual dumping margins or countervailable subsidy rates because of the large number of exporters or producers involved in the investigation or review, the Secretary may determine individual margins or rates for a reasonable number of exporters or producers. In accordance with sections 777 A(c)(2) and 777 A(e)(2)(A) of the Act, the Secretary will normally limit the examination to

either a sample of exporters or producers that the Secretary determines is statistically valid based on record information or exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that the Secretary determines can be reasonably examined.

(2) *Limiting examination to the largest exporters or producers.* In general, if the Secretary determines to limit the number of exporters or producers for individual examination, otherwise known as respondents, based on the largest volume of the subject merchandise from the exporting country that the Secretary determines can be reasonably examined, the Secretary will apply the following methodology:

(i) *Selecting the data source to determine the largest exporters or producers of subject merchandise.* The Secretary will normally select respondents based on data for entries of subject merchandise made during the relevant time period derived from U.S. Customs and Border Protection. If the Secretary determines that the use of the U.S. Customs and Border Protection data source is not appropriate based on record information, the Secretary may use another reasonable means of selecting potential respondents in an investigation or review including, but not limited to, the use of quantity and value questionnaire responses derived from a list of possible exporters of subject merchandise.

(ii) *Selecting the largest exporters or producers of subject merchandise based on volume or value.* The Secretary will normally select the largest exporters or producers based on the volume of imports of subject merchandise. However, the Secretary may determine at times that volume data are unreliable or inconsistent, depending on the product at issue. In those situations, the Secretary may instead select the largest exporters of subject merchandise based on the value of the imported products instead of the volume of the imported products.

(iii) *Determining whether the number of exporters or producers is too large to make individual examination of each known exporter or producer of subject merchandise practicable.* The Secretary will determine on a case-specific basis whether

the number of exporters or producers is too large to make individual examination of each known exporter or producer of subject merchandise practicable based on the potential exporters or producers identified in a petition, the exporters or producers identified in the data source considered in paragraph (c)(1) of this provision, or the exporters or producers for which an administrative review is requested. In determining whether the number of exporters or producers is too large to make individual examination of each known exporter or producer of subject merchandise practicable, the Secretary will normally consider:

(A) The amount of resources and detailed analysis which will be necessary to examine each potential respondent's information;

(B) The current and future workload of the office administering the anti-dumping or countervailing duty proceeding; and

(C) The Secretary's overall current resource availability.

(iv) *Determining the number of exporters or producers that can be reasonably examined.* In determining the number of exporters or producers (respondents) that can be reasonably examined on a case-specific basis, the Secretary will normally:

(A) Consider the total and relative volumes (or values) of entries of subject merchandise during the relevant period for each potential respondent derived from the data source considered in paragraph (c)(2) of this section;

(B) Rank the potential respondents by the total volume (or values) of entries into the United States during the relevant period; and

(C) Determine the number of exporters or producers the Secretary can reasonably examine, considering resource availability and statutory requirements, and select the exporters or producers with the largest volume (or values) of entries consistent with that number.

(v) *Selecting additional respondents for examination.* Once the Secretary has determined the number of exporters or producers that can be reasonably examined and has selected the potential respondents for examination, the Secretary will issue questionnaires to

those selected exporters or producers. If a potential respondent does not respond to the questionnaires or elects to withdraw from participation in the segment of the proceeding soon after filing questionnaire responses, or the Secretary otherwise determines early in the segment of the proceeding that a selected exporter or producer is no longer participating in the investigation or administrative review or that the exporter's or producer's sales of subject merchandise are not *bona fide*, the Secretary may select the exporter or producer with the next largest volume or value of entries to replace the respondents initially selected by the Secretary for examination if the Secretary determines that such a selection will not inhibit or impede the timely completion of that segment of the proceeding.

(d) *Waiver for certain selected respondents.* The Secretary may waive individual examination of an exporter or producer selected to be an examined respondent if both the selected respondent and the petitioner file waiver requests for that selected respondent no later than five days after the Secretary has selected respondents. If the Secretary provides such a waiver and previously selected the waived respondent in accordance with paragraph (c)(2) of this section, the Secretary may select the respondent with the next largest volume or value of entries for examination to replace the initially selected respondent.

(e) *Single country-wide subsidy rate.* In accordance with 777A(e)(2)(B) of the Act, in limiting exporters or producers examined in countervailing duty proceedings, including countervailing duty investigations under sections 703(d)(1)(A)(ii) and 705(c)(5)(B) of the Act, the Secretary may determine, in the alternative, a single country-wide subsidy rate to be applied to all exporters and producers.

(f) *Calculating the all-others rate.* In accordance with sections 705(c)(1)(B), 705(c)(5), 735(c)(1)(B)(i), and 735(c)(5) of the Act, if the Secretary makes an affirmative antidumping or countervailing duty determination, the Secretary will determine an estimated all-others rate as follows:

(1) *In general.* (i) For an antidumping proceeding involving a market economy country, the all-others rate will normally equal the weighted average of the estimated weighted-average dumping margins established for the individually investigated exporters or producers, excluding any zero and *de minimis* margins and any margins determined entirely under section 776 of the Act.

(ii) For a countervailing duty proceeding, the all-others rate will normally equal the weighted average of the countervailable subsidy rates established for the individually investigated exporters and producers, excluding any zero and *de minimis* countervailable subsidy rates and any rates determined entirely under section 776 of the Act.

(2) *Exceptions to the general rules for calculating the all-others rate.* The Secretary may determine not to apply the general rules provided in paragraph (f)(1) of this section:

(i) If the Secretary determines that only one individually investigated exporter or producer has a calculated weighted-average dumping margin or countervailable subsidy rate that is not zero, *de minimis*, or determined entirely under section 776 of the Act, the Secretary may apply that weighted-average dumping margin or countervailable subsidy rate as the all-others rate.

(ii) If the Secretary determines that weight-averaging calculated dumping margins or countervailable subsidy rates established for individually investigated exporters or producers could result in the inadvertent release of proprietary information among the individually investigated exporters or producers, the Secretary may apply the following analysis:

(A) First, the Secretary will calculate the weighted-average dumping margin or countervailable subsidy rate for the individually investigated exporters or producers using their reported data, including business proprietary data;

(B) Second, the Secretary will calculate both a simple average of the individually investigated exporters' or producers' dumping margins or countervailable subsidy rates and a

weighted-average dumping margin or countervailable subsidy rate using the individually investigated exporters' or producers' publicly-ranged data; and

(C) Third, the Secretary will compare the two averages calculated in paragraph (f)(2)(ii)(B) of this section with the weighted-average margin or rate determined in paragraph (f)(2)(ii)(A) of this section. The Secretary will apply, as the all-others rate, the average calculated in paragraph (f)(2)(ii)(B) of this section which is numerically the closest to the margin or rate calculated in paragraph (f)(2)(ii)(A) of this section.

(iii) If the estimated weighted average dumping margins or countervailable subsidy rates established for all individually investigated exporters and producers are zero, *de minimis*, or determined entirely under section 776 of the Act, the Secretary may use any reasonable method to establish an all-others rate for exporters and producers not individually examined, including averaging the estimated weighted average dumping margins or countervailable subsidy rates determined for the individually investigated exporters and producers.

(3) *A nonmarket economy country entity rate is not an all-others rate.* The all-others rate determined in a market economy antidumping investigation or countervailing duty investigation may not be increased in subsequent segments of a proceeding. The rate determined for a nonmarket economy country entity determined in an investigation is not an all-others rate and may be modified in subsequent segments of a proceeding if selected for examination.

(g) *Calculating a rate for unexamined exporters and producers.* In determining a separate rate in an investigation or administrative review covering a nonmarket economy country pursuant to § 351.108(b), a margin for unexamined exporters and producers in an administrative review covering a market economy country, or a countervailable subsidy rate for unexamined exporters and producers in a countervailing duty administrative review, the Secretary will normally apply the methodology set forth in paragraphs (f)(1) and (2) of this section. If the Secretary determines that weight-averaging calculated

dumping margins or countervailable subsidy rates established for individually investigated exporters or producers could result in the inadvertent release of proprietary information among the individually examined exporters or producers, then the Secretary may establish a separate rate, review-specific margin, or countervailable subsidy rate using a reasonable method other than the weight-averaging of dumping margins or countervailable rates, such as the use of a simple average of the calculated dumping margins or countervailable subsidy rates.

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

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

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

(ii) If multiple exporters or producers seek voluntary respondent treatment and the Secretary determines to examine a voluntary respondent individually, the Secretary will select voluntary respondents in the chronological order in which complete requests were filed correctly on the record.

(4) *Timing of voluntary respondent submissions.* The deadlines for voluntary respondent submissions will generally be the same as the deadlines for submissions by individually investigated respondents. If there are two or more individually investigated respondents with different deadlines for a submission, such as when one respondent has received an extension and the other has not, voluntary respondents will normally be required to file their submissions with the Secretary by the earliest deadline of the individually investigated respondents.

[89 FR 101760, Dec. 16, 2024, as amended at 90 FR 14205, Mar. 31, 2025]

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. Petitioners are also advised to refer to the Commission's regulations concerning the contents of petitions, currently 19 CFR 207.11.

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

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

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

(3) Information relating to the degree of industry support for the petition, including:

(i) The total volume and value of U.S. production of the domestic like product; and

(ii) The volume and value of the domestic like product produced by the petitioner and each domestic producer identified;

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

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

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

(7)(i) In the case of an antidumping proceeding:

(A) The names and addresses of each person the petitioner believes sells the subject merchandise at less than fair value and the proportion of total exports to the United States that each person accounted for during the most recent 12-month period (if numerous, provide information at least for persons that, based on publicly available information, individually accounted for two percent or more of the exports);

(B) All factual information (particularly documentary evidence) relevant to the calculation of the export price and the constructed export price of the subject merchandise and the normal value of the foreign like product (if unable to furnish information on foreign sales or costs, provide information on production costs in the United States, adjusted to reflect production costs in the country of production of the subject merchandise);

(C) If the merchandise is from a country that the Secretary has found to be a nonmarket economy country, factual information relevant to the calculation of normal value, using a method described in § 351.408; or

(ii) In the case of a countervailing duty proceeding:

(A) The names and addresses of each person the petitioner believes benefits from a countervailable subsidy and exports the subject merchandise to the United States and the proportion of total exports to the United States that each person accounted for during the most recent 12-month period (if numerous, provide information at least for persons that, based on publicly available information, individually accounted for two percent or more of the exports);

(B) The alleged countervailable subsidy and factual information (particularly documentary evidence) relevant to the alleged countervailable subsidy, including any law, regulation, or decree under which it is provided, the manner in which it is paid, and the value of the subsidy to exporters or producers of the subject merchandise;

(C) If the petitioner alleges an upstream subsidy under section 771A of the Act, factual information regarding:

(I) Countervailable subsidies, other than an export subsidy, that an author-

ity of the affected country provides to the upstream supplier;

(2) The competitive benefit the countervailable subsidies bestow on the subject merchandise; and

(3) The significant effect the countervailable subsidies have on the cost of producing the subject merchandise;

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

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

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

(11) If the petitioner alleges “critical circumstances” under section 703(e)(1) or section 733(e)(1) of the Act and § 351.206, factual information regarding:

(i) Whether imports of the subject merchandise are likely to undermine seriously the remedial effect of any order issued under section 706(a) or section 736(a) of the Act;

(ii) Massive imports of the subject merchandise in a relatively short period; and

(iii) (A) In an antidumping proceeding, either:

(I) A history of dumping; or

(2) The importer’s knowledge that the exporter was selling the subject merchandise at less than its fair value, and that there would be material injury by reason of such sales; or

(B) In a countervailing duty proceeding, whether the countervailable subsidy is inconsistent with the Subsidies Agreement; and

(12) Any other factual information on which the petitioner relies.

(c) *Simultaneous filing and certification.* The petitioner must file a copy of the petition with the Commission and the Secretary on the same day and so certify in submitting the petition to the Secretary. Factual information in

the petition must be certified, as provided in §351.303(g). Other filing requirements are set forth in §351.303.

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

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

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

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

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

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

(i) *Pre-initiation communications—(1) In general.* During the period before the Secretary's decision whether to initiate an investigation, the Secretary will not consider the filing of a notice of appearance to constitute a communication for purposes of section 702(b)(4)(B) or section 732(b)(3)(B) of the Act.

(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 meas-

ure production based on either value or volume. Where a party to the proceeding establishes that production data for the relevant period, as specified by the Secretary, is unavailable, production levels may be established by reference to alternative data that the Secretary determines to be indicative of production levels.

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

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

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

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

(5) *Polling the industry*. In conducting a poll of the industry under section 702(c)(4)(D)(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.

(g) *Time limits for filing interested party comments on industry support.* For purposes of sections 702(c)(4)(E) and 732(c)(4)(E) of the Act, the Secretary will consider comments or information on the issue of industry support submitted no later than 5 business days before the date referenced in paragraph (b)(1) of this section by any interested party under section 771(9) of the Act. The Secretary will consider rebuttal comments or information to rebut, clarify, or correct such information on industry support submitted by any interested party no later than two calendar days from the time limit for filing comments.

[62 FR 27379, May 19, 1997, as amended at 86 FR 52371, Sept. 20, 2021]

§ 351.204 Period of investigation; requests for exclusions from countervailing duty orders based on investigations conducted on an aggregate basis.

(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 covers exclusion requests in countervailing duty investigations conducted on an aggregate basis.

(b) *Period of investigation—(1) Anti-dumping investigation.* In an anti-dumping investigation, the Secretary normally will examine merchandise sold during the four most recently completed fiscal quarters (or, in an investigation involving merchandise imported from a nonmarket economy country, the two most recently completed fiscal quarters) as of the month

preceding the month in which the petition was filed or in which the Secretary self-initiated an investigation. However, the Secretary may examine merchandise sold during any additional or alternate period that the Secretary concludes is appropriate.

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

(c) *Limiting exporters or producers examined and voluntary respondents.* Once the Secretary has initiated the anti-dumping or countervailing duty investigation, the Secretary may determine that it is not practicable to examine each known exporter or producer. In accordance with § 351.109(c), the Secretary may select a limited number of exporters or producers to examine. Furthermore, in accordance with section 782(a) of the Act and § 351.109(h), the Secretary may determine to examine voluntary respondents.

(d) *Requests for exclusions from countervailing duty orders based on investigations conducted on an aggregate basis.* When 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:

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

(2) If the exporter or producer received a countervailable subsidy, calculations demonstrating that the

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amount of net countervailable subsidies received was *de minimis* during the period of investigation;

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

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

[62 FR 27379, May 19, 1997, as amended at 73 FR 3643, Jan. 22, 2008; 88 FR 67077, Sept. 29, 2023; 89 FR 101762, Dec. 16, 2024]

§ 351.205 Preliminary determination.

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

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

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

(2) Not later than 190 days in an antidumping investigation (130 days in a countervailing duty investigation) after the date on which the Secretary initiated the investigation if the Secretary postpones the preliminary determination at petitioner's request or

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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). With respect to section 703(d)(1)(B) and 733(d)(1)(B) of the Act, the Secretary will normally order the posting of cash deposits to ensure payment if antidumping or countervailing duties ultimately are imposed. 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.

[62 FR 27379, May 19, 1997, as amended at 76 FR 61045, Oct. 3, 2011]

§ 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; or

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

(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.

[62 FR 27379, May 19, 1997, as amended at 64 FR 48707, Sept. 8, 1999]

§ 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 U.S. Customs and Border Protection 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 anti-dumping or countervailing duty investigation by accepting a suspension

agreement (referred to in the WTO Agreements as an "undertaking"). Briefly, in a suspension agreement, the exporters and producers or the foreign government agree to modify their behavior so as to eliminate dumping or subsidization or the injury caused thereby. If the Secretary accepts a suspension agreement, the Secretary will "suspend" the investigation and thereafter will monitor compliance with the agreement. This section contains rules for entering into suspension agreements and procedures for suspending an investigation.

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

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

(d) *Monitoring.* In monitoring a suspension agreement under section 704(c), section 734(c), or section 734(l) of the Act (agreements to eliminate injurious effects or to restrict the volume of imports), the Secretary will not be obliged to ascertain on a continuing basis the prices in the United States of the subject merchandise or of domestic like products.

(e) *Exports not to increase during interim period.* The Secretary will not accept a suspension agreement under section 704(b)(2) or section 734(b)(1) of the Act (the cessation of exports) unless the agreement ensures that the quantity of the subject merchandise exported during the interim period set forth in the agreement does not exceed the quantity of the merchandise exported during a period of comparable duration that the Secretary considers representative.

(f) *Procedure for suspension of investigation—(1) Submission of proposed suspension agreement—(i) In general.* As appropriate, the exporters and producers

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or, in an antidumping investigation involving a nonmarket economy country or a countervailing duty investigation, the government, must submit to the Secretary a proposed suspension agreement within:

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

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

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

(iii) *Special rule for regional industry determination.* If the Commission makes a regional industry determination in its final affirmative determination under section 705(b) or section 735(b) of the Act but not in its preliminary affirmative determination under section 703(a) or section 733(a) of the Act, the exporters and producers or, in an antidumping investigation involving a nonmarket economy country or a countervailing duty investigation, the government, must submit to the Secretary 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)(iii) of this section, will notify all parties to the proceeding of the proposed suspension agreement and provide to the petitioner a copy of the agreement preliminarily accepted by the Secretary (such agreement must contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of section 704 or section 734 of the Act); and

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

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

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

(ii) In a countervailing duty investigation, 35 days after the date of

issuance of the preliminary determination, or

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

(g) *Acceptance of suspension agreement.*

(1) The Secretary may accept an agreement to suspend an investigation within:

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

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

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

(2) If the Secretary accepts an agreement 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 determina-

tion, the agreement will have no force or effect.

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

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

§ 351.209 Violation of suspension agreement.

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

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

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

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

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

(2) If the investigation was not completed under section 704(g) or section 734(g) of the Act, resume the investigation as if the Secretary had made an affirmative preliminary determination on the date of publication of the notice of cancellation and impose provisional measures by instructing U.S. Customs and Border Protection 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 U.S. Customs and Border Protection 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 Anti-

dumping (Countervailing Duty) Suspension Agreement.”

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

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

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

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

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

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

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

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

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

(iii) Continue the suspension of investigation by accepting a revised suspension agreement under section 704(c),

section 734(c), or section 734(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 U.S. Customs and Border Protection to release any cash deposit or bond. If the Commission undertakes a review under section 704(h) or section 734(h) of the Act, the provisions of sections 704(h)(2) and (3) and sections 734(h)(2) and (3) of the Act will apply.

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

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

(e) *Definition of "violation."* Under this section, "violation" means non-compliance with the terms of a suspension agreement caused by an act or

omission of a signatory, except, at the discretion of the Secretary, an act or omission which is inadvertent or inconsequential.

§ 351.210 Final determination.

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

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

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

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

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

(ii) Exporters or producers who account for a significant proportion of 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

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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 U.S. Customs and Border Protection 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—(1) In general.* A request to postpone a final antidumping determination under section 735(a)(2) of the Act (*see* paragraph (b)(2) of this section) must be submitted in writing within the scheduled date of the final determination. The Secretary may grant the request, unless the Sec-

retary finds compelling reasons to deny the request.

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

(f) *Deferral of decision concerning upstream subsidization to review.* Notwithstanding paragraph (b)(3) of this section, if the petitioner so requests in writing and the preliminary countervailing duty determination was affirmative, the Secretary, instead of postponing the final determination, may defer a decision concerning upstream subsidization until the conclusion of the first administrative review of a countervailing duty order, if any (*see* section 703(g)(2)(B)(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 certain countervailing duty investigations) have made final affirmative determinations. The issuance of an order ends the investigative phase of a proceeding. Generally, upon the issuance of an order, importers no longer may post bonds as security for antidumping or countervailing duties, but instead must make a cash deposit of estimated duties. An order remains in effect until it is revoked. This section contains rules regarding the issuance of orders in general, as well as special rules for orders where the Commission has found a regional industry to exist.

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

dumping Order" or "Countervailing Duty Order" that:

(1) Instructs U.S. Customs and Border Protection 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 U.S. Customs and Border Protection 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 U.S. Customs and Border Protection 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).

§ 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*—(i) *In general*. If the Secretary has conducted a review of an antidumping duty 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 by dividing the dumping margin found on the subject merchandise examined by the estimated entered value of such merchandise for normal customs duty purposes on an *ad valorem* basis. If the resulting assessment rate is not zero or *de minimis*, the Secretary will then instruct U.S. Customs and Border Protection to assess antidumping duties by applying the assessment rate to the entered value of the merchandise.

(ii) *Assessment on a per-unit basis*. If the Secretary determines that the information normally used to calculate an *ad valorem* assessment rate is not available or the use of an *ad valorem* rate is otherwise not appropriate, the Secretary may instruct U.S. Customs and Border Protection to assess duties on a per-unit basis.

(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 U.S. Customs and Border Protection 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 U.S. Customs and Border Protection to:

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

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

(2) If the Secretary receives a timely request for an administrative review of an order (*see* paragraph (b)(1), (b)(2), or (b)(3) of § 351.213), the Secretary will instruct U.S. Customs and Border Protection 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 U.S. Customs and Border Protection 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 U.S. Customs and Border Protection 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.

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

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

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

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

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

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

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

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

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

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

(i) Will issue assessment instructions to U.S. Customs and Border Protection in accordance with paragraph (b) of this section; or

(ii) If the review was limited to a determination as to whether an exception from the assessment of duties should be granted, the Secretary will instruct U.S. Customs and Border Protection to assess duties in accordance with paragraph (f)(1) or (f)(2) of this section,

whichever is appropriate (automatic assessment if no review is requested).

[62 FR 27379, May 19, 1997, as amended at 89 FR 101762, Dec. 16, 2024]

§ 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 anti-dumping 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 anti-dumping 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 re-

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

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

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

(d) *Rescission of administrative review—*

(1) *Withdrawal of request for review.* The Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Secretary may extend this

time limit if the Secretary decides that it is reasonable to do so.

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

(3) *No shipments.* The Secretary may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be.

(4) *Notice of rescission.* If the Secretary rescinds an administrative review (in whole or in part), the Secretary will publish in the FEDERAL REGISTER notice of "Rescission of Antidumping (Countervailing Duty) Administrative Review" or, if appropriate, "Partial Rescission of Antidumping (Countervailing Duty) Administrative Review."

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

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

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

(ii) For requests received during the first anniversary month after publica-

tion 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) *Limiting exporters or producers examined and voluntary respondents.* Once the Secretary has initiated an antidumping or countervailing duty administrative review, the Secretary may determine that it is not practicable to examine each known exporter or producer. In accordance with § 351.109(c), the Secretary may select a limited number of exporters or producers to examine. Furthermore, in accordance with section 782(a) of the Act and § 351.109(h), the Secretary may determine to examine voluntary respondents.

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

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

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

(i) *Possible cancellation or revision of suspension agreement.* If during an administrative review the Secretary determines or has reason to believe that a signatory has violated a suspension agreement or that the agreement no

longer meets the requirements of section 704 or section 734 of the Act (whichever is applicable), the Secretary will take appropriate action under section 704(i) or section 734(i) of the Act and § 351.209. The Secretary may suspend the time limit in paragraph (h) of this section while taking action under § 351.209.

(j) *Absorption of antidumping duties.*

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

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

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

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

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

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

(k) *Administrative reviews of countervailing duty orders conducted on an aggregate basis—(1) Request for zero rate.*

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

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

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

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

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

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

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

[62 FR 27379, May 19, 1997, as amended at 89 FR 101762, Dec. 16, 2024]

§ 351.214 New shipper reviews under section 751(a)(2)(B) of the Act; expedited reviews in countervailing duty proceedings.

(a) *Introduction.* Section 751(a)(2)(B) of the Act provides a 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. Furthermore, section 751(a)(2)(B)(iv) requires that the Secretary make a determination of whether the sales under review are bona fide. This section contains rules regarding requests for new shipper reviews and procedures for conducting such reviews, as well as requirements for determining whether sales are bona fide under section 751(a)(2)(B)(iv) of the Act. In addition, this section contains rules regarding requests for expedited reviews by non-investigated exporters in certain countervailing duty proceedings and procedures for conducting such reviews.

(b) *Request for new shipper review—(1) Requirement of sale or export.* Subject to the requirements of section 751(a)(2)(B) of the Act and this section, an exporter or producer may request a new shipper review if it has exported, or sold for export, subject merchandise to the United States and can demonstrate the existence of a bona fide sale.

(2) *Contents of request.* A request for a new shipper review must contain the following:

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

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

(A) The certification described in paragraph (b)(2)(i) of this section; and

(B) A certification from the person that produced or supplied the subject

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

(iii)(A) A certification that, since the investigation was initiated, such exporter or producer has never been affiliated with any exporter or producer who exported the subject merchandise to the United States (or in the case of a regional industry, who exported the subject merchandise for sale in the region concerned) during the period of investigation, including those not individually examined during the investigation; and

(B) In an antidumping proceeding involving imports from a nonmarket economy country, a certification that the export activities of such exporter or producer are not controlled by the central government;

(iv) Certain information regarding the unaffiliated customer:

(A) A certification from the exporter or producer that it will provide, to the fullest extent possible, necessary information related to the unaffiliated customer in the United States during the new shipper review; and

(B) A certification by the unaffiliated customer of its willingness to participate in the new shipper review and provide information relevant to the new shipper review, if such information is requested by the Secretary, or an explanation by the producer/exporter or why such certification from the unaffiliated customer cannot be provided.

(v) Documentation establishing:

(A) The date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot establish the date of first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States;

(B) The volume of that shipment and any subsequent shipments, including whether such shipments were made in commercial quantities;

(C) The date of the first sale, and any subsequent sales, to an unaffiliated customer in the United States;

(D) The circumstances surrounding such sale(s), including but not limited to:

(1) The price of such sales;

(2) Any expenses arising from such sales;

(3) Whether the subject merchandise involved in such sales was resold in the United States at a profit;

(4) Whether such sales were made on an arms-length basis; and

(E) Additional documentation regarding the business activities of the producer or exporter, including but not limited to:

(1) The producer or exporter's offers to sell merchandise in the United States;

(2) An identification of the complete circumstance surrounding the producer or exporter's sales to the United States, as well as any home market or third country sales;

(3) In the case of a non-producing exporter, an explanation of the exporter's relationship with its producer/supplier; and

(4) An identification of the producer's or exporter's relationship to the first unaffiliated U.S. purchaser;

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

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

(d) *Initiation of new shipper review—(1) In general.* If the requirements for a request for new shipper review under paragraph (b) of this section are satisfied, the Secretary will initiate a new shipper review under this section in the calendar month immediately following the anniversary month or the semi-annual 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 semi-annual anniversary month (whichever is applicable).

(2) *Semiannual anniversary month.* The semiannual anniversary month is the calendar month that 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.

(4) *Exception.* If the Secretary determines that the requirements for a request for new shipper review under paragraph (b) of this section have not been satisfied, the Secretary will reject the request and provide a written explanation of the reasons for the rejection.

(e) *Suspension of liquidation.* When the Secretary initiates a new shipper review under this section, the Secretary will direct U.S. Customs and Border Protection to suspend or continue to suspend liquidation of any unliquidated entries of the subject merchandise from the relevant exporter or producer at the applicable cash deposit rate.

(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 producer or exporter that requested a review withdraws its request not later than 60 days after the date of publication of notice of initiation of the requested review.

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

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

(ii) An expansion of the normal period of review to include an entry and sale to an unaffiliated customer in the United States of subject merchandise

would be likely to prevent the completion of the review within the time limits set forth in paragraph (i) of this section;

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

(i) Information that the Secretary considers necessary to conduct a bona fide sale analysis is not on the record; or

(ii) The producer or exporter seeking a new shipper review has failed to demonstrate to the satisfaction of the Secretary the existence of a bona fide sale to an unaffiliated customer.

(4) *Notice of rescission.* If the Secretary rescinds a new shipper review (in whole or in part), the Secretary will publish in the FEDERAL REGISTER notice of "Rescission of Antidumping (Countervailing Duty) New Shipper Review" or, if appropriate, "Partial Rescission of Antidumping (Countervailing Duty) New Shipper Review."

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

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

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

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

(B) If the Secretary initiates a new shipper review under this section in the

month immediately following the first semiannual anniversary month, the review normally will cover, as appropriate, entries, exports, or sales during the period from the date of suspension of liquidation under this part to the end of the month immediately preceding the first semiannual anniversary month.

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

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

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

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

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

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

(2) Decline to initiate, in whole or in part, a review under this subpart; or

(3) Where the requesting producer or exporter 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) *Determinations based on bona fide sales.* In determining whether the U.S. sales of an exporter or producer made during the period covered by the review are bona fide, the Secretary shall consider the factors identified at section 751(a)(2)(B)(iv) of the Act. In accordance with section 751(a)(2)(B)(iv)(VII) of the Act, the Secretary shall consider the following factors:

(1) Whether the producer, exporter, or customer was established for purposes of the sale(s) in question after the imposition of the relevant antidumping or countervailing duty order;

(2) Whether the producer, exporter, or customer has lines of business unrelated to the subject merchandise;

(3) The quantity of sales; and

(4) Any other factor that the Secretary determines to be relevant with respect to the future selling behavior of the producer or exporter, including any other indicia that the sale was not commercially viable.

(1) *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 the Secretary did not select for individual examination or that the Secretary did not accept as a voluntary respondent (see § 351.109(h)) may request a review under this paragraph (1). An exporter must submit a request for review within 30 days of the date of publication in the FEDERAL REGISTER of the countervailing duty order. 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;

(ii) The requester is not affiliated with an exporter or producer that the Secretary individually examined in the investigation; and

(iii) The requester has informed the government of the exporting country that the government will be required to provide a full response to the Department's questionnaire.

(2) *Initiation of review—(i) In general.* The Secretary will initiate a review in the month following the month in

which a request for review is due under paragraph (1)(1) of this section.

(ii) *Example.* The Secretary publishes a countervailing duty order on January 15. An exporter would have to submit a request for a review by February 14. The Secretary would initiate a review in March.

(3) *Conduct of review.* The Secretary will conduct a review under this paragraph (1) in accordance with the provisions of this section applicable to new shipper reviews, subject to the following exceptions:

(i) The period of review will be the period of investigation used by the Secretary in the investigation that resulted in the publication of the countervailing duty order (see § 351.204(b)(2));

(ii) The final results of a review under this paragraph (1) will not be the basis for the assessment of countervailing duties; and

(iii) The Secretary may exclude from the countervailing duty order in question any exporter for which the Secretary determines an individual net countervailable subsidy rate of zero or *de minimis* (see § 351.107(c)(3)(ii)), provided that the Secretary has verified the information on which the exclusion is based.

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

[86 FR 52371, Sept. 20, 2021, as amended at 89 FR 101762, Dec. 16, 2024]

§ 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. Within 45 days after the date on which a request is filed, the Secretary will determine whether to initiate a changed circumstances review.

(c) *Limitation on changed circumstances review.* Unless the Secretary finds that good cause exists, the Secretary will not review a final determination in an investigation (*see* sec-

tion 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, or within 45 days if all parties to the proceeding agree to the outcome of the review.

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

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

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

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

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

(3) No administrative review is in progress, the Secretary will initiate an Article 8 violation review of the order or suspended investigation to determine whether the subject merchandise 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—(1) Initial sunset review.* No later than 30 days before the fifth anniversary date of an order or suspension of an investigation (see section 751(c)(1) of the Act), the Secretary will publish a notice of initiation of a sunset review (see section 751(c)(2) of the Act).

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

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

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

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

(ii) *Contents of notice of intent to participate*. Every notice of intent to participate in a sunset review must include a statement expressing the domestic interested party's intent to participate in the sunset review and the following information:

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

(B) A statement indicating whether the domestic producer:

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

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

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

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

(E) The citation and date of publication in the FEDERAL REGISTER of the notice of initiation.

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

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

(1) Conclude that no domestic interested party has responded to the notice

of initiation under section 751(c)(3)(A) of the Act;

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

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

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

(i) *Filing of statement of waiver*. A respondent interested party may waive participation in a sunset review before the Department under section 751(c)(4) of the Act by filing a statement of waiver with the Department, not later than 30 days after the date of publication in the FEDERAL REGISTER of the notice of initiation. If a respondent interested party waives participation in a sunset review before the Department, the Secretary will not accept or consider any unsolicited submissions from that party during the course of the review. Waiving participation in a sunset review before the Department will not affect a party's opportunity to participate in the sunset review conducted by the International Trade Commission.

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

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

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

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

(D) The citation and date of publication in the FEDERAL REGISTER of the notice of initiation.

(iii) [Reserved]

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

(A) Conclude that respondent interested parties have provided inadequate response to the notice of initiation under section 751(c)(3)(B) of the Act;

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

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

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

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

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

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

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

(D) The citation and date of publication in the FEDERAL REGISTER of the notice of initiation;

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

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

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

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

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

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

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

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

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

(D) For each of the five calendar years (or fiscal years, if more appropriate) preceding the year of publication of the notice of initiation, on a volume basis (or value basis, if more appropriate), that party's percentage of the total exports of subject merchandise (defined in section 771(25) of the Act) to the United States; and

(E) For each of the three most recent years, including the year of publication of the notice of initiation, that party's volume and value (normally on an FOB basis) of exports of subject merchandise to the United States during the two fiscal quarters as of the month preceding the month in which the notice of initiation was published.

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

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

(v) *Required information to be filed by a foreign government in substantive response to the notice of initiation in a CVD sunset review*—(A) *In general*. The foreign government of a country subject to a CVD sunset review (see section

771(9)(B) of the Act) that intends to participate in a CVD sunset review must file a submission with the Department under paragraph (d)(3)(i) of this section containing the information required under paragraphs (d)(3)(ii) (A) through (E) of this section.

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

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

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

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

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

(4) *Rebuttal to substantive response to a notice of initiation*. Any interested party that files a substantive response to a notice of initiation under paragraph (d)(3) of this section may file a rebuttal to any other party's substantive response to a notice of initiation not later than five days after the date the substantive response is filed with the Department. Except as provided in §351.309(e), the Secretary normally will not accept or consider any additional

information from a party after the time for filing rebuttals has expired, unless the Secretary requests additional information from parties after determining to proceed to a full sunset review under paragraph (e)(2) of this section.

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

(B) *Disregarding response from a domestic interested party.* In making its determination concerning the adequacy of response from domestic interested parties under paragraph (e)(1)(i)(A) of this section, the Secretary may disregard a response from a domestic producer:

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

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

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

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

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

(3) Not later than 90 days after the date of publication in the FEDERAL

REGISTER of the Notice of Initiation, issue a final determination revoking the order or terminating the suspended investigation (see §§ 351.221(c)(5)(ii) and 351.222(i)).

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

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

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

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

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

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

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

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

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

(ii) [Reserved]

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

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

(2) *Verification*—(i) *In general.* The Department will verify factual information relied upon in making its final determination normally only in a full sunset review (see section 782(i)(2) of the Act and §351.307(b)(1)(iii)) and only where needed. The Department will conduct verification normally only if,

in its preliminary results, the Department determines that revocation of the order or termination of the suspended investigation, as applicable, is not likely to lead to continuation or recurrence of a countervailable subsidy or dumping (see section 752(b) and section 752(c) of the Act), as applicable, and the Department's preliminary results are not based on countervailing duty rates or dumping margins, as applicable, determined in the investigation or subsequent reviews.

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

(3) *Final results of full sunset review and notification to the International Trade Commission*—(i) *Timing of final results of review and notification to the International Trade Commission.* The Department normally will issue its final results in a full sunset review and notify the International Trade Commission of its results of review not later than 240 days after the date of publication in the FEDERAL REGISTER of the notice of initiation (see section 751(c)(5)(A) of the Act).

(ii) *Extension of time limit.* If the Secretary determines that a full sunset review is extraordinarily complicated under section 751(c)(5)(C) of the Act, the Secretary may extend the period for issuing final results by not more than 90 days (see section 751(c)(5)(B) of the Act).

(4) *Notice of continuation of an order or suspended investigation; notice of revocation of an order or termination of a suspended investigation.* Except as provided in paragraph (d)(1)(iii)(B)(3) of this section and §351.222(i)(1)(i), the Department normally will issue its determination to continue an order or suspended investigation, or to revoke an order or terminate a suspended investigation, as applicable, not later than seven days after the date of publication in the FEDERAL REGISTER of the International Trade Commission's determination concluding the sunset review.

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The Department immediately thereafter will publish notice of its determination in the FEDERAL REGISTER.

[62 FR 27379, May 19, 1997, as amended at 63 FR 13520, Mar. 20, 1998; 70 FR 62064, Oct. 28, 2005]

§ 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 requests for section 753 investigations by a domestic interested party; and the procedures that the Department will follow in reviewing a countervailing duty order and providing the Commission with advice regarding the amount and nature of a countervailable subsidy.

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

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

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

At the direction of the President or a designee, the Secretary will conduct a

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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 U.S. Customs and Border Protection 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 U.S. Customs and Border Protection 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 U.S. Customs and Border Protection 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;

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

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

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

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

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

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

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

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

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

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

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

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at the time the Secretary initiates the review; and

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

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

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

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

(iii) Include in the preliminary results of review the countervailable subsidy, if any, during the period of review and a description of official changes in the subsidy programs made by the government of the affected country that affect the estimated countervailable subsidy; and

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

[62 FR 27379, May 19, 1997, as amended at 63 FR 13525, Mar. 20, 1998]

§ 351.222 Revocation of orders; termination of suspended investigations.

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

revoke an order or terminate a suspended investigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Treatment of unreviewed intervening years*—(1) *In general.* The Secretary will not revoke an order or terminate a suspended investigation under paragraphs (b) or (c) of this section unless the Secretary has conducted a review under this subpart of the first and third (or fifth) years of the three-and five-year consecutive time periods referred to in those paragraphs. The Secretary need not have conducted a review of an intervening year (*see* paragraph (d)(2) of this section). However, except in the case of a revocation or termination under paragraph (c)(1) of this section (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 any year between the first and final year of the consecutive period on which revocation or termination is conditioned.

(e) Request for revocation or termination—(1) *Antidumping proceeding.* During the third and subsequent annual anniversary months of the publi-

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

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

(ii) Certifications for all exporters and producers covered by the order or suspension agreement that, during each of the consecutive years referred to in paragraph (b) of this section, they sold the subject merchandise to the United States in commercial quantities.

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

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

(A) Certifications for all exporters and producers covered by the order or

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

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

(C) A certification from each exporter or producer that, during each of the consecutive years referred to in paragraph (c)(2) of this section, that person sold the subject merchandise to the United States in commercial quantities.

(f) *Procedures.* (1) Upon receipt of a timely request for revocation or termination under paragraph (e) of this section, the Secretary will consider the request as including a request for an administrative review and will initiate and conduct a review under § 351.213.

(2) When the Secretary is considering a request for revocation or termination under paragraph (e) of this section, in addition to the requirements of § 351.221 regarding the conduct of an administrative review, the Secretary will:

(i) Publish with the notice of initiation under § 351.221(b)(1), notice of "Request for Revocation of Order" or "Request for Termination of Suspended Investigation" (whichever is applicable);

(ii) Conduct a verification under § 351.307;

(iii) Include in the preliminary results of review under § 351.221(b)(4) the Secretary's decision whether there is a reasonable basis to believe that the requirements for revocation or termination are met;

(iv) If the Secretary decides that there is a reasonable basis to believe that the requirements for revocation or termination are met, publish with the notice of preliminary results of review under § 351.221(b)(4) notice of "Intent To Revoke Order" or "Intent To Terminate Suspended Investigation" (whichever is applicable);

(v) Include in the final results of review under § 351.221(b)(5) the Secretary's final decision whether the requirements for revocation or termination are met; and

(vi) If the Secretary determines that the requirements for revocation or termination are met, publish with the notice of final results of review under § 351.221(b)(5) notice of "Revocation of Order" or "Termination of Suspended Investigation" (whichever is applicable).

(3) If the Secretary revokes an order, the Secretary will order the suspension of liquidation terminated for the merchandise covered by the revocation on the first day after the period under review, and will instruct U.S. Customs and Border Protection 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* § 351.221(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 U.S. Customs and Border Protection 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) Circumstances under which the Secretary will revoke an order or terminate a suspended investigation.* In the case of a sunset review under § 351.218, the Secretary will revoke an order or terminate a suspended investigation:

(i) Under section 751(c)(3)(A) of the Act, where no domestic interested party files a Notice of Intent to Participate in the sunset review under § 351.218(d)(1), or where the Secretary determines under § 351.218(e)(1)(i)(C) that domestic interested parties have provided inadequate response to the Notice of Initiation, not later than 90 days after the date of publication in the FEDERAL REGISTER of the notice of initiation;

(ii) Under section 751(d)(2) of the Act, where the Secretary determines that revocation or termination is not likely to lead to continuation or recurrence of a countervailable subsidy or dumping (see section 752(b) and section 752(c) of the Act), as applicable, not later than 240 days (or 330 days where a full sunset review is fully extended) after the date of publication in the FEDERAL REGISTER of the notice of initiation; or

(iii) Under section 751(d)(2) of the Act, where the International Trade Commission makes a determination, under section 752(a) of the Act, that revocation or termination is not likely to lead to continuation or recurrence of material injury, not later than seven days after the date of publication in the FEDERAL REGISTER of the International Trade Commission’s determination concluding the sunset review.

(2) *Effective date of revocation—(i) In general.* Except as provided in paragraph (i)(2)(ii) of this section, where the Secretary revokes an order or terminates a suspended investigation, pursuant to section 751(c)(3)(A) or section 751(d)(2) of the Act (see paragraph (i)(1) of this section), the revocation or termination will be effective on the

fifth anniversary of the date of publication in the FEDERAL REGISTER of the order or suspended investigation, as applicable. This paragraph also applies to subsequent sunset reviews of transition orders (see paragraph (i)(2)(ii) of this section and section 751(c)(6)(A)(iii) of the Act).

(ii) *Transition orders.* Where the Secretary revokes a transition order (defined in section 751(c)(6)(C) of the Act) pursuant to section 751(c)(3)(A) or section 751(d)(2) of the Act (see paragraph (i)(1) of this section), the revocation or termination will be effective on January 1, 2000. This paragraph does not apply to subsequent sunset reviews of transition orders (see section 751(c)(6)(A)(iii) of the Act).

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

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

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

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

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

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

(ii) Include in the final results of review, under §351.221(b)(5), the Sec-

retary'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 U.S. Customs and Border Protection 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) *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.

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§ 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 calculations performed, if any, in connection with a preliminary results of review under section 751 or section 753 of the Act, normally not later than ten days after the date of 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. Comments concerning ministerial errors made in the preliminary results of a review should be included in a party's case brief.

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

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

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

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

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

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

(e) *Corrections.* The Secretary will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination, or correct any ministerial error by amending the final determination or the final results of review (whichever is applicable). Where practicable, the Secretary will announce publicly the issuance of a correction notice, and normally will do so within 30 days after the date of public announcement, 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 rulings.

(a) *Introduction.* Questions sometimes arise as to whether a particular product is covered by the scope of an antidumping or countervailing duty order. Such questions may arise for a variety of reasons given that the description of the merchandise subject to the scope is written in general terms. The Secretary will initiate and conduct a scope inquiry and issue a scope ruling to determine whether or not a product is covered by the scope of an order at the request of an interested party or on the Secretary’s initiative. A scope ruling that a product is covered by the scope of an order is a determination that the product has always been covered by the scope of that order. This section contains rules and procedures regarding scope rulings, including scope ruling applications, scope inquiries, and standards used in determining whether a product is covered by the scope of an order. Unless otherwise specified, the

procedures as described in subpart C of this part (§§ 351.301 through 351.308 and §§ 351.312 through 351.313) apply to this section.

(b) *Self-initiation of a scope inquiry.* If the Secretary determines from available information that an inquiry is warranted to determine whether a product is covered by the scope of an order, the Secretary may initiate a scope inquiry by publishing a notice of initiation in the FEDERAL REGISTER.

(c) *Scope ruling application—(1) Contents.* An interested party may submit a scope ruling application requesting that the Secretary conduct a scope inquiry to determine whether a product, which is or has been in actual production by the time of the filing of the application, is covered by the scope of an order. If the product at issue has not been imported into the United States, the applicant must provide evidence that the product has been commercially produced and sold. The Secretary will make available a scope ruling application, which the applicant must fully complete and serve in accordance with the requirements of paragraph (n) of this section.

(2) *Requested information.* To the extent reasonably available to the applicant, the scope ruling application must include the following requested information and relevant supporting documentation.

(i) A detailed description of the product and its uses, as necessary:

(A) The physical characteristics (including chemical, dimensional, and technical characteristics) of the product;

(B) The country(ies) where the product is produced, the country from where the product is exported, and if imported, the declared country of origin;

(C) The product’s tariff classification under the Harmonized Tariff Schedule of the United States and copies of any Customs rulings relevant to the tariff classification;

(D) The uses of the product;

(E) Clear and legible photographs, schematic drawings, specifications, standards, marketing materials, and any other exemplars providing a visual depiction of the product; and

(F) A description of parts, materials, and the production process employed in the production of the product;

(ii) A concise public summary of the product's description under paragraphs (c)(2)(i)(A) through (C) of this section.

(iii) The name and address of the producer, exporter, and importer of the product.

(iv) A narrative history of the production of the product at issue, including a history of earlier versions of the product if this is not the first model of the product.

(v) The volume of annual production of the product for the most recently completed fiscal year.

(vi) If the product has been imported into the United States as of the date of the filing of the scope ruling application:

(A) An explanation as to whether an entry of the product has been declared by an importer, or determined by U.S. Customs and Border Protection, as subject to an order, and

(B) Relevant documentation, including dated copies of U.S. Customs and Border Protection entry summary forms (or electronic entry processing system documentation) identifying the product upon importation and other related commercial documents, including invoices and contracts, which reflect the details surrounding the sale and purchase of that imported product.

(vii) A statement as to whether the product undergoes any additional processing in the United States after importation, or in a third country before importation, and a statement as to the relevance of this processing to the scope of the order.

(viii) The applicant's statement as to whether the product is covered by the scope of the order, including:

(A) An explanation with specific reference to paragraph (j) and (k) of this section, as appropriate;

(B) Citations to any applicable legal authority; and

(C) Whether there are companion orders as described in paragraph (m)(2) of this section.

(ix) Factual information supporting the applicant's position, including full copies of prior scope determinations and relevant excerpts of other docu-

ments identified in paragraph (k)(1) of this section.

(x) If the product has not been imported into the United States as of the date of the filing of the scope ruling application:

(A) A statement that the product has been commercially produced;

(B) A description of the countries in which the product is sold, or has been sold; and

(C) Relevant documentation which reflects the details surrounding the production and sale of that product in countries other than the United States.

(3) *Comments on the adequacy of the request.* Within 10 days after the filing of a scope ruling application under paragraph (c)(1) of this section, an interested party other than the applicant is permitted one opportunity to submit comments regarding the adequacy of the scope ruling application.

(d) *Initiation of a scope inquiry and other actions based on a scope ruling application*—(1) *Acceptance and initiation of a scope inquiry based on a scope ruling application.* Except as provided under paragraph (d)(1)(ii) or (d)(2) of this section, within 30 days after the filing of a scope ruling application, the Secretary will determine whether to accept or reject the scope ruling application and to initiate or not initiate a scope inquiry, or, in the alternative, paragraph (d)(1)(ii) will apply.

(i) If the Secretary determines that a scope ruling application is incomplete or otherwise unacceptable, the Secretary may reject the scope ruling application and will provide a written explanation of the reasons for the rejection. If the scope ruling application is rejected, the applicant may resubmit the full application at any time, with all identified deficiencies corrected.

(ii) If the Secretary issues questions to the applicant seeking clarification with respect to one or more aspects of a scope ruling application, the Secretary will determine whether or not to initiate within 30 days after the applicant files a timely response to the Secretary's questions.

(iii) If the Secretary does not reject the scope ruling application or initiate the scope inquiry within 31 days after

the filing of the application or the receipt of a timely response to the Secretary's questions, the application will be deemed accepted, and the scope inquiry will be deemed initiated.

(2) *Addressing the scope issue in another segment of the proceeding.* Within 30 days after the filing of a scope ruling application, if the Secretary determines upon review of the application that the scope issue before the Secretary should be addressed in an ongoing segment of the proceeding, such as a circumvention inquiry under § 351.226 or a covered merchandise inquiry under § 351.227, rather than initiating a scope inquiry, the Secretary will notify the applicant of its intent to address the scope issue in such other segment.

(3) *Notice of scope applications.* On a monthly basis, the Secretary will publish a notice in the FEDERAL REGISTER listing scope applications filed with the Secretary.

(e) *Deadlines for scope rulings—(1) In general.* The Secretary shall issue a final scope ruling within 120 days after the date on which the scope inquiry was initiated under paragraph (b) or (d) of this section.

(2) *Extension.* The Secretary may extend the deadline in paragraph (e)(1) of this section by no more than 180 days, for a final scope ruling to be issued no later than 300 days after initiation, if the Secretary determines that good cause exists to warrant an extension. Situations in which good cause has been demonstrated may include:

(3) *Alignment with other segments.* If the Secretary determines it is appropriate to do so, the Secretary may align the deadlines under this paragraph with the deadlines of another segment of the proceeding.

(f) *Scope inquiry procedures.* The filing and timing restrictions of § 351.301(c) do not apply to this paragraph (f), and factual information submitted inconsistent with the terms of this paragraph may be rejected as unsolicited and untimely. (1) Within 30 days after the Secretary's self-initiation of a scope inquiry under paragraph (b) of this section, interested parties are permitted one opportunity to submit comments and factual information addressing the self-initiation. Within 14 days after the filing of such comments, any

interested party is permitted one opportunity to submit comments and factual information submitted by the other interested parties.

(2) Within 30 days after the initiation of a scope inquiry under paragraph (d)(1) of this section, an interested party other than the applicant is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information contained in the scope ruling application. Within 14 days after the filing of such rebuttal, clarification, or correction, the applicant is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction.

(3) Following initiation of a scope inquiry under paragraph (b) or (d) of this section, the Secretary may issue questionnaires and verify submissions received, where appropriate. The Secretary may limit issuance of questionnaires to a reasonable number of respondents. Questionnaire responses are due on the date specified by the Secretary. Within 14 days after a questionnaire response has been filed with the Secretary, an interested party other than the original submitter is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information contained in the questionnaire response. Within seven days of the filing of such rebuttal, clarification, or correction, the original submitter is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction.

(4) If the Secretary issues a preliminary scope ruling under paragraph (g) of this section, which is not issued concurrently with the initiation of the scope inquiry, the Secretary will establish a schedule for the filing of scope comments and rebuttal comments. Unless otherwise specified, any interested party may submit scope comments within 14 days after the issuance of the preliminary scope ruling, and any interested party may submit rebuttal comments within 7 days thereafter.

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Unless otherwise specified, no new factual information will be accepted in the scope or rebuttal comments.

(5) If the Secretary issues a preliminary scope ruling concurrently with the initiation of a scope inquiry under paragraph (g) of this section, paragraphs (f)(1) through (4) of this section will not apply. In such a situation, the Secretary will establish appropriate procedures on a case-specific basis.

(6) If the Secretary determines it is appropriate to do so, the Secretary may rescind, in whole or in part, a scope inquiry under this section and will notify interested parties.

(7) If the Secretary determines it is appropriate to do so, the Secretary may alter or extend any time limits under this paragraph or establish a separate schedule for the filing of comments and/or factual information during the scope inquiry.

(g) *Preliminary scope ruling.* The Secretary may 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 covered by the scope of the order. In determining whether to issue a preliminary scope ruling, the Secretary may consider the complexity of the issues and arguments raised in the scope inquiry. The Secretary may issue a preliminary scope ruling concurrently with the initiation of a scope inquiry under paragraph (b) or (d) of this section.

(h) *Final scope ruling.* The Secretary will issue a final scope ruling as to whether the product that is the subject of the scope inquiry is covered by the scope of the order, including an explanation of the factual and legal conclusions on which the final scope ruling is based. The Secretary will promptly convey a copy of the final scope ruling in the manner prescribed by section 516A(a)(2)(A)(ii) of the Act to all parties to the proceeding (see §351.102(b)(36)), subject to the notice requirements for Governments of an FTA country under §356.6 and §356.7.

(i) *Other segments of the proceeding.* (1) Notwithstanding any other provision of this section, the Secretary may, but is not required to, address scope issues in another segment of the proceeding,

such as an administrative review under §351.213, a circumvention inquiry under §351.226, or a covered merchandise inquiry under §351.227 without conducting or completing a scope inquiry under this section. For example, the Secretary may rescind a scope inquiry under paragraph (f)(6) of this section and determine whether the product at issue is covered by the scope of the order in another segment of the proceeding (including another scope inquiry).

(2) During the pendency of a scope inquiry or upon issuance of a final scope ruling under paragraph (h) of this section, the Secretary may take any further action, as appropriate, with respect to another segment of the proceeding. For example, if the Secretary considers it appropriate, the Secretary may request information concerning the product that is the subject of the scope inquiry for purpose of an administrative review under §351.213.

(j) *Country of origin determinations.* In considering whether a product is covered by the scope of the order at issue, the Secretary may need to determine the country of origin of the product. To make such a determination, the Secretary may use any reasonable method and is not bound by the determinations of any other agency, including tariff classification and country of origin marking rulings issued by U.S. Customs and Border Protection.

(1) In determining the country of origin, the Secretary may conduct a substantial transformation analysis that considers relevant factors that arise on a case-by-case basis, including:

(i) Whether the processed downstream product is a different class or kind of merchandise than the upstream product;

(ii) The physical characteristics (including chemical, dimensional, and technical characteristics) of the product;

(iii) The intended end-use of the downstream product;

(iv) The cost of production/value added of further processing in the third country or countries;

(v) The nature and sophistication of processing in the third country or countries; and

(vi) The level of investment in the third country or countries.

(2) In conducting a country of origin determination, the Secretary also may consider where the essential component of the product is produced or where the essential characteristics of the product are imparted.

(k) *Scope rulings.* (1) In determining whether a product is covered by the scope of the order at issue, the Secretary will consider the language of the scope and may make its determination on this basis alone if the language of the scope, including the descriptions of merchandise expressly excluded from the scope, is dispositive.

(i) The following primary interpretive sources may be taken into account under paragraph (k)(1) introductory text of this section, at the discretion of the Secretary:

(A) The descriptions of the merchandise contained in the petition pertaining to the order at issue;

(B) The descriptions of the merchandise contained in the initial investigation pertaining to the order at issue;

(C) Previous or concurrent determinations of the Secretary, including prior scope rulings, memoranda, or clarifications pertaining to both the order at issue, as well as other orders with same or similar language as that of the order at issue; and

(D) Determinations of the Commission pertaining to the order at issue, including reports issued pursuant to the Commission's initial investigation.

(ii) The Secretary may also consider secondary interpretive sources under paragraph (k)(1) introductory text of this section, such as any other determinations of the Secretary or the Commission not identified above, Customs rulings or determinations, industry usage, dictionaries, and any other relevant record evidence. However, in the event of a conflict between these secondary interpretive sources and the primary interpretive sources under paragraph (k)(1)(i) of this section, the primary interpretive sources will normally govern in determining whether a product is covered by the scope of the order at issue.

(2)(i) If the Secretary determines that the sources under paragraph (k)(1) of this section are not dispositive, the

Secretary will then further consider the following factors:

(A) The physical characteristics (including chemical, dimensional, and technical characteristics) of the product;

(B) The expectations of the ultimate users;

(C) The ultimate use of the product;

(D) The channels of trade in which the product is sold; and

(E) The manner in which the product is advertised and displayed.

(ii) In the event of a conflict between the factors under paragraph (k)(2)(i) of this section, paragraph (k)(2)(i)(A) will normally be allotted greater weight than the other factors.

(3) If merchandise contains or consists of two or more components and the product at issue in the scope inquiry is a component of that merchandise as a whole, the Secretary may adopt the following analysis:

(i) The Secretary will analyze the scope language under paragraph (k)(1) of this section, and, if necessary, the factors under paragraph (k)(2) of this section, to determine if the component product, standing alone, would be covered by an order;

(ii) If the Secretary determines that the component product would otherwise be covered by the scope of an order as a result of the analysis under (k)(3)(i) of this section, the Secretary will consider the scope language under paragraph (k)(1) of this section to determine whether the component product's inclusion in the merchandise as a whole results in its exclusion from the scope of the order; and

(iii) If the Secretary determines the analysis under (k)(3)(ii) of this section does not resolve whether the component product's inclusion in the merchandise as a whole results in its exclusion from the scope of the order, then the Secretary will consider, as appropriate, the following relevant factors that may arise on a product-specific basis:

(A) The practicability of separating the in-scope component for repackaging or resale, considering the relative difficulty and expense of separating the components;

(B) The measurable value of the in-scope component as compared to the

measurable value of the merchandise as a whole; and

(C) The ultimate use or function of the in-scope component relative to the ultimate use or function of the merchandise as a whole.

(1) *Suspension of liquidation.* (1) When the Secretary initiates a scope inquiry under paragraph (b) or (d) of this section, the Secretary will notify U.S. Customs and Border Protection of the initiation and direct U.S. Customs and Border Protection to continue the suspension of liquidation of entries of products subject to the scope inquiry that were already subject to the suspension of liquidation, and to apply the cash deposit rate that would be applicable if the product were determined to be covered by the scope of the order. Such suspension shall include, but shall not be limited to, entries covered by the final results of administrative review of an antidumping or countervailing duty order pursuant to §351.212(b), automatic assessment pursuant to §351.212(c), and a rescinded administrative review pursuant to §351.213(d), as well as any other entries already suspended by U.S. Customs and Border Protection under the anti-dumping and countervailing duty laws which have not yet been liquidated in accordance with 19 CFR part 159.

(2) If the Secretary issues a preliminary scope ruling under paragraph (g) of this section that the product at issue is covered by the scope of the order, the Secretary will take the following actions:

(i) The Secretary will direct U.S. Customs and Border Protection to continue the suspension of liquidation of previously suspended entries and apply the applicable cash deposit rate;

(ii) The Secretary will direct U.S. Customs and Border Protection to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry; and

(iii)(A) *In general.* Subject to paragraph (1)(2)(iii)(B) of this section, the Secretary normally will direct U.S. Customs and Border Protection to

begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption prior to the date of initiation of the scope inquiry.

(B) *Exception.* If the Secretary determines it is appropriate to do so, the Secretary may, at the timely request of an interested party or at the Secretary's discretion, direct U.S. Customs and Border Protection to begin the suspension of liquidation and apply the applicable cash deposit rate under paragraph (1)(2)(iii)(A) of this section at an alternative date. In response to a timely request from an interested party, the Secretary will only consider an alternative date based on a specific argument supported by evidence establishing the appropriateness of that alternative date.

(3) If the Secretary issues a final scope ruling under paragraph (h) of this section that the product at issue is covered by the scope of the order, the Secretary will take the following actions:

(i) The Secretary will direct U.S. Customs and Border Protection to continue the suspension of liquidation of previously suspended entries and apply the applicable cash deposit rate until appropriate liquidation instructions are issued;

(ii) The Secretary will direct U.S. Customs and Border Protection to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry until appropriate liquidation instructions are issued; and

(iii)(A) *In general.* Subject to paragraph (1)(3)(iii)(B) of this section, the Secretary normally will direct U.S. Customs and Border Protection to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption prior to

the date of initiation of the scope inquiry until appropriate liquidation instructions are issued.

(B) *Exception.* If the Secretary determines it is appropriate to do so, the Secretary may, at the timely request of an interested party or at the Secretary's discretion, direct U.S. Customs and Border Protection to begin the suspension of liquidation and apply the applicable cash deposit rate under paragraph (1)(3)(iii)(A) of this section at an alternative date until appropriate liquidation instructions are issued. In response to a timely request from an interested party, the Secretary will only consider an alternative date based on a specific argument supported by evidence establishing the appropriateness of that alternative date.

(4) If the Secretary issues a final scope ruling under paragraph (h) of this section that the product is not covered by the scope of the order, and entries of the product at issue are not otherwise subject to suspension of liquidation as a result of another segment of the proceeding, such as a circumvention inquiry under § 351.226 or a covered merchandise inquiry under § 351.227, the Secretary will order U.S. Customs and Border Protection to terminate the suspension of liquidation and refund any cash deposits for such entries.

(5) Nothing in this section affects the U.S. Customs and Border Protection's authority to take any additional action with respect to the suspension of liquidation or related measures.

(m) *Applicability of scope rulings; companion orders*—(1) *Applicability of scope rulings.* In conducting a scope inquiry under this section, the Secretary shall consider, based on the available record evidence, whether the scope ruling should be applied:

(i) On a producer-specific, exporter-specific, importer-specific basis, or some combination thereof; or

(ii) To all products from the same country with the same relevant physical characteristics, (including chemical, dimensional and technical characteristics) as the product at issue, on a country-wide basis, regardless of the producer, exporter or importer of those products.

(2) *Companion antidumping and countervailing duty orders.* If there are com-

panion antidumping and countervailing duty orders covering the same merchandise from the same country of origin, the requesting interested party under paragraph (c) of this section must file the scope ruling application pertaining to both orders on the records of both the antidumping duty and countervailing duty proceedings. If the Secretary accepts the scope applications on both records under paragraph (d) of this section, the Secretary will notify the requesting interested party that all subsequent filings should be filed only on the record of the antidumping duty proceeding. If the Secretary determines to initiate a scope inquiry under paragraph (b) or (d) of this section, the Secretary will initiate and conduct a single inquiry with respect to the product at issue for both orders only on the record of the antidumping duty proceeding. Once the Secretary issues a final scope ruling on the record of the antidumping duty proceeding, the Secretary will include on the record of the countervailing duty proceeding a copy of the scope ruling memoranda, a copy of the preliminary scope ruling memoranda, if one had been issued, and all relevant instructions to U.S. Customs and Border Protection.

(n) *Service of scope ruling application; annual inquiry service list; entry of appearance.* (1) The requirements of § 351.303(f) apply to this section, except that an interested party that submits a scope ruling application under paragraph (c) of this section must serve a copy of the application on all persons on the annual inquiry service list for that order, as well as the companion order, if any, as described in paragraph (m)(2) of this section. If a scope ruling application is rejected and resubmitted pursuant to paragraph (d)(1) of this section, service of the resubmitted application is not required under this paragraph, unless otherwise specified.

(2) For purposes of this section, the "annual inquiry service list" will include the petitioner(s) and those parties that file a request for inclusion on the annual inquiry service list for a proceeding, in accordance with the Secretary's established procedures.

(3) A new "annual inquiry service list" will be established on a yearly

basis. Parties filing a request for inclusion on that list must file a request during the anniversary month of the publication of the antidumping or countervailing duty order. Only the petitioner and the government of the foreign country at issue in an antidumping or countervailing duty order will be automatically placed on the new annual inquiry service list once the previous year's list has been replaced.

(4) Once a scope inquiry has been self-initiated or a scope ruling application is accepted by the Secretary, a segment-specific service list will be established and the requirements of § 351.303(f) will apply. Parties other than the scope ruling applicant under paragraph (c) of this section that wish to participate in the scope inquiry must file an entry of appearance in accordance with § 351.103(d)(1).

(o) *Publication of list of final scope rulings.* On a quarterly basis, the Secretary will publish in the FEDERAL REGISTER a list of final scope rulings issued within the previous three months. This list will include the case name, and a brief description of the ruling. The Secretary also may include complete public versions of its scope rulings on its website, should the Secretary determine such placement is warranted.

(p) *Suspended investigations; suspension agreements.* The Secretary may apply the procedures set forth in this section in determining whether a product at issue is covered by the scope of a suspended investigation or a suspension agreement (see § 351.208).

(q) *Scope clarifications.* The Secretary may issue a scope clarification at any time which provides an interpretation of specific language in the scope of an order and addresses other scope-related issues but does not address or determine whether a product is covered by the scope of an order in the first instance other than in the situations listed in this paragraph (q).

(1) Scope clarifications may be used in the following situations to clarify:

(i) Whether a product is covered or excluded by the scope of an order based on two or more previous scope determinations covering products which have the same or similar physical char-

acteristics (including chemical, dimensional, and technical characteristics);

(ii) Whether a product covered by the scope of an order, and for which coverage is not at issue, is not subject to the imposition of antidumping or countervailing duties pursuant to a statutory exception to the trade remedy laws, such as the limited governmental importation exception set forth in section 771(20)(B) of the Act;

(iii) Whether language or descriptors in the scope of an order that are subsequently updated, revised, or replaced, in the following circumstances, continue to apply to the product at issue:

(A) Modifications to the language in the scope of an order pursuant to litigation or a changed circumstances review under section 751(b) of the Act;

(B) Changes to Harmonized Tariff Schedule classifications, as administered by the Commission; and

(C) Changes to industrial standards set forth in a scope, as determined by the industry source for those standards identified in the scope; and

(iv) To clarify an analysis conducted by Commerce in a previous scope determination or scope ruling. For example, an issue may arise as to whether certain processing, observed in a segment of proceeding and conducted in a third country, falls within a stage of production previously determined by the Secretary in a country-of-origin analysis in the same proceeding, pursuant to paragraph (j)(2) of this section, to be the stage of production at which the essential component of the product is produced or where the essential characteristics of the product are imparted.

(2) Scope clarifications may take the form of an interpretive footnote to the scope when the scope is published or issued in instructions to U.S. Customs and Border Protection, or in a memorandum issued in an ongoing segment of a proceeding. At the discretion of the Secretary, a scope clarification may also take the form of preliminary and final notices of scope clarification published in the FEDERAL REGISTER. If the Secretary decides to publish preliminary and final notifications of scope clarification, it must provide interested parties at least 30 days after the publication of the preliminary notification of scope clarification to file

comments with the Secretary. The Secretary will address those comments in the final notification of scope clarification published in the FEDERAL REGISTER.

[86 FR 52374, Sept. 20, 2021, as amended at 88 FR 67077, Sept. 29, 2023; 89 FR 20833, Mar. 25, 2024]

§ 351.226 Circumvention inquiries.

(a) *Introduction.* Section 781 of the Act addresses the circumvention of antidumping and countervailing duty orders. This provision recognizes that circumvention seriously undermines the effectiveness of the remedies provided by the antidumping and countervailing duty proceedings and frustrates the purposes for which these laws were enacted. Section 781 of the Act allows the Secretary to apply antidumping and countervailing duty orders in such a way as to prevent circumvention by including within the scope of the order four distinct categories of merchandise. The Secretary will initiate and conduct a circumvention inquiry at the request of an interested party or on the Secretary's initiative, and issue a circumvention determination as provided for under section 781 of the Act and the rules and procedures in this section. Unless otherwise specified, the procedures as described in subpart C of this part (§§ 351.301 through 351.308 and 351.312 through 351.313) apply to this section.

(b) *Self-initiation of a circumvention inquiry.* If the Secretary determines from available information that an inquiry is warranted into the question of whether the elements necessary for a circumvention determination under section 781 of the Act exist, the Secretary may initiate a circumvention inquiry by publishing a notice of initiation in the FEDERAL REGISTER.

(c) *Circumvention inquiry request—(1) In general.* An interested party may submit a request for a circumvention inquiry that alleges that the elements necessary for a circumvention determination under section 781 of the Act exist and that is accompanied by information reasonably available to the interested party supporting these allegations. The circumvention inquiry request must be served in accordance

with the requirements of paragraph (n) of this section.

(2) *Contents of request.* To the extent reasonably available to the requestor, a circumvention inquiry request must include the following requested information under paragraph (c)(1) of this section and relevant supporting documentation:

(i) A detailed description of the merchandise allegedly circumventing the antidumping or countervailing duty order, including:

(A) The physical characteristics (including chemical, dimensional or technical characteristics) of the product;

(B) The country(ies) where the product is produced, the country from where it is exported, and the declared country of origin;

(C) The product's tariff classification under the Harmonized Tariff Schedule of the United States and copies of any Customs rulings relevant to the tariff classification;

(D) The uses of the product;

(E) Clear and legible photographs, schematic drawings, specifications, standards, marketing materials, and any other exemplars providing a visual depiction of the product; and

(F) A description of parts, materials, and the production process employed in the production of the product.

(ii) A concise public summary of the product's description under paragraphs (c)(2)(i)(A) through (C) of this section.

(iii) The name and address of the producer, exporter, and importer of the product. If the full universe of parties allegedly circumventing the order(s) is unknown, then examples are sufficient.

(iv) A statement of the requestor's position as to the nature of the alleged circumvention under section 781 of the Act, such as a description of the procedures, channels of trade, and foreign countries involved (including a description of the processes occurring in each country), as appropriate.

(v) A statement of the requestor's position as to whether the circumvention inquiry, if initiated, should be conducted on a country-wide basis.

(vi) Factual information supporting this position, including import and export data relevant to the merchandise allegedly circumventing the anti-dumping or countervailing duty order.

(3) *Comments and information on the adequacy of the request.* Within 10 days after the filing of a circumvention inquiry request under paragraph (c)(1) of this section, an interested party other than the requestor is permitted one opportunity to submit comments and new factual information regarding the adequacy of the circumvention inquiry request. Within five days after the filing of new factual information in support of adequacy comments, the requestor is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct that factual information.

(d) *Initiation of a circumvention inquiry and other actions based on a request—(1) Initiation of a circumvention inquiry.* Except as provided under paragraphs (d)(1)(ii) and (d)(2) of this section, within 30 days after the filing of a request for a circumvention inquiry, the Secretary will determine whether to accept or reject the request and whether to initiate or not initiate a circumvention inquiry. If it is not practicable to make such determinations within 30 days, the Secretary may extend the 30-day deadline by an additional 15 days if no interested party has filed new factual information in response to the circumvention request pursuant to paragraph (c)(3) of this section. If interested parties have filed new factual information pursuant to paragraph (c)(3) of this section, the Secretary may extend the 30-day deadline by an additional 30 days.

(i) If the Secretary determines that the request is incomplete or otherwise unacceptable, the Secretary may reject the request, and will provide a written explanation of the reasons for the rejection. If the request is rejected, the requestor may resubmit the full request at any time, with all identified deficiencies corrected.

(ii) If the Secretary issues questions to the requestor seeking clarification with respect to one or more aspects of a circumvention inquiry request, the Secretary will determine whether or not to initiate within 30 days after the requestor files a timely response to the Secretary's questions.

(iii) If the Secretary determines that a request for a circumvention inquiry satisfies the requirements of paragraph

(c) of this section, the Secretary will accept the request and initiate a circumvention inquiry. The Secretary will publish a notice of initiation in the FEDERAL REGISTER.

(2) *Other actions based on a request for a circumvention inquiry.* Where applicable, the Secretary may take one of the following actions within the applicable timeline under paragraph (d)(1) of this section:

(i) If the Secretary determines upon review of a request for a circumvention inquiry that a scope ruling is warranted before the Secretary can conduct a circumvention analysis, the Secretary may either initiate the circumvention inquiry under paragraph (d)(1)(ii) of this section and address the scope issue in the circumvention inquiry (see § 351.225(i)(1)), or defer initiation of the circumvention inquiry pending the completion of any ongoing or new segment of the proceeding addressing the scope issue. When initiation is deferred pending another segment of the proceeding, if the result of that other segment is that the product at issue is not covered by the scope of the antidumping and/or countervailing duty order(s) at issue, the Secretary may immediately initiate the circumvention inquiry upon the issuance of the final decision in that other segment; or

(ii) If the Secretary determines upon review of the request for a circumvention inquiry that the circumvention issue should be addressed in an ongoing segment of the proceeding, such as a covered merchandise inquiry under § 351.227, rather than initiating a circumvention inquiry, the Secretary will notify the requestor of its intent to address the circumvention issue in such other segment.

(e) *Deadlines for circumvention determinations—(1) Preliminary determination.* The Secretary will issue a preliminary determination under paragraph (g)(1) of this section no later than 150 days after the date of publication of the notice of initiation of paragraph (b) or (d) of this section. If the Secretary concludes that an extension of the preliminary determination is warranted, the Secretary may extend that deadline by no more than 90 additional days.

(2) *Final determination.* In accordance with section 781(f) of the Act, the Secretary shall, to the maximum extent practicable, issue a final determination under paragraph (g)(2) of this section no later than 300 days from the date of publication of the notice of initiation of a circumvention inquiry under paragraph (b) or (d) of this section. If the Secretary concludes that the inquiry is extraordinarily complicated and additional time is necessary to issue a final circumvention determination, then the Secretary may extend the 300-day deadline by no more than 65 days.

(3) *Alignment with other segments.* If the Secretary determines it is appropriate to do so, the Secretary may align the deadlines under this paragraph with the deadlines of another segment of the proceeding.

(f) *Circumvention inquiry procedures.* The filing and timing instructions of §351.301(c) do not apply to this paragraph (f), and factual information submitted inconsistent with the terms of this paragraph may be rejected as unsolicited and untimely. (1) Within 30 days after the Secretary's self-initiation of a circumvention inquiry under paragraph (b) of this section, interested parties are permitted one opportunity to submit comments and factual information addressing the self-initiation. Within 14 days after the filing of such comments, any interested party is permitted one opportunity to submit comments and factual information submitted by the other interested parties.

(2) Within 30 days after the initiation of a circumvention inquiry under paragraph (d)(1) of this section, an interested party other than the applicant is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information contained in the scope ruling application. Within 14 days after the filing of such rebuttal, clarification, or correction, the applicant is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification, or correction.

(3) Following initiation of a circumvention inquiry under paragraph (b) or (d) of this section, the Secretary may issue questionnaires and verify

submissions received, where appropriate. The Secretary may limit issuance of questionnaires to a reasonable number of respondents. Questionnaire responses are due on the date specified by the Secretary. Within 14 days after a questionnaire response has been filed with the Secretary, an interested party other than the original submitter is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information contained in the questionnaire response. Within 7 days of the filing of such rebuttal, clarification, or correction, the original submitter is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information contained in the interested party's rebuttal, clarification or correction.

(4) If the Secretary issues a preliminary circumvention determination under paragraph (g)(1) of this section, which is not issued concurrently with the initiation of the circumvention inquiry, the Secretary will establish a schedule for the filing of comments and rebuttal comments. Unless otherwise specified, any interested party may submit comments within 14 days after the issuance of the preliminary circumvention determination, and any interested party may submit rebuttal comments within 7 days thereafter. Unless otherwise specified, no new factual information will be accepted in the comments or rebuttal comments.

(5) If the Secretary issues a preliminary circumvention determination concurrently with the initiation of the circumvention inquiry under paragraph (g)(1) of this section, paragraphs (f)(1) through (4) will not apply. In such a situation, the Secretary will establish appropriate procedures on a case-specific basis.

(6) If the Secretary determines it is appropriate to do so, the Secretary may rescind, in whole or in part, a circumvention inquiry, under this section and will notify interested parties. Situations in which the Secretary may rescind a circumvention inquiry include:

(i) The requestor timely withdraws its request for a circumvention inquiry under paragraph (c) of this section;

(ii) The Secretary issues a final determination in another segment of a proceeding, and has determined that the merchandise at issue in the circumvention inquiry is covered by the scope of the antidumping or countervailing duty order;

(iii) The Secretary has initiated a circumvention inquiry under paragraph (b) or (d) of this section to examine circumvention under two or more provisions under paragraph (h), (i), (j), or (k) of this section, and determines that it is not necessary to issue a final circumvention determination with respect to one of those paragraphs. For example, if the Secretary initiates a circumvention inquiry to examine whether merchandise is altered in minor respects under paragraph (j) of this section or later-developed merchandise under paragraph (k) of this section, the Secretary may rescind the inquiry in part to address only one of those provisions; or

(iv) The Secretary has initiated a covered merchandise inquiry under § 351.227 and determined that it can address the necessary elements for a circumvention determination under section 781 of the Act in that proceeding.

(7) If the Secretary determines it is appropriate to do so, the Secretary may alter or extend any time limits under this paragraph or establish a separate schedule for the filing of comments and/or factual information during the circumvention inquiry.

(8)(i) The Secretary will notify the Commission in writing of the proposed inclusion of products in an order prior to issuing a final determination under paragraph (g)(2) of this section based on a determination under:

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

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

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

(ii) If the Secretary notifies the Commission under paragraph (f)(8)(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.

(9) During the pendency of a circumvention inquiry or upon issuance of a final circumvention determination under paragraph (g)(2) of this section, the Secretary may take any further action, as appropriate, with respect to another segment of the proceeding. For example, if the Secretary considers it appropriate, the Secretary may request information concerning the product that is the subject of the circumvention inquiry for purposes of an administrative review under § 351.213.

(g) *Circumvention determinations*—(1) *Preliminary determination.* The Secretary will issue a preliminary determination, based upon the available information at the time, as to whether there is a reasonable basis to believe or suspect that the elements necessary for a circumvention determination under section 781 of the Act exist. The preliminary determination will be published in the FEDERAL REGISTER. The Secretary may publish notice of a preliminary determination concurrently with the notice of initiation of a circumvention inquiry under paragraph (b) or (d) of this section.

(2) *Final determination.* The Secretary will issue a final determination as to whether the elements necessary for a circumvention determination under section 781 of the Act exist, in which case the merchandise at issue will be included within the scope of the order. As part of its determination, the Secretary will include an explanation of the factual and legal conclusions on which the final determination is based.

The final determination will be published in the FEDERAL REGISTER. Promptly after publication, the Secretary will convey a copy of the final determination in the manner prescribed by section 516A(a)(2)(A)(ii) of the Act to all parties to the proceeding (see §351.102(b)(36)).

(h) *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 determining the value of parts or components (including such purchases from another person) under section 781(a)(1)(D) of the Act, or of processing performed (including by another person) under section 781(a)(2)(E) of the Act, the Secretary may determine the value of the part or component on the basis of the cost of producing the part or component under section 773(e) of the Act—or, in the case of nonmarket economies, on the basis of section 773(c) of the Act.

(i) *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 determining the value of parts or components (including such purchases from another person) under section 781(b)(1)(D) of the Act, or of processing performed (including by another person) under section 781(b)(2)(E) of the Act, the Secretary may determine the value of the part or component on the basis of the cost of producing the part or component under section 773(e) of the Act—or, in the case of nonmarket economies, on the basis of section 773(c) of the Act.

(j) *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.

The Secretary may consider such criteria including, but not limited to, the overall physical characteristics of the merchandise, (including chemical, dimensional, and technical characteristics), the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products. The Secretary also may consider the circumstances under which the products enter the United States, including but not limited to the timing of the entries and the quantity of merchandise entered during the circumvention review period.

(k) *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. In determining whether merchandise is “later-developed” the Secretary will examine whether the merchandise at issue was commercially available at the time of the initiation of the underlying antidumping or countervailing duty investigation.

(1) *Suspension of liquidation.* (1) When the Secretary publishes a notice of initiation of a circumvention inquiry under paragraph (b) or (d) of this section, the Secretary will notify U.S. Customs and Border Protection of the initiation and direct U.S. Customs and Border Protection to continue the suspension of liquidation of entries of products subject to the circumvention inquiry that were already subject to the suspension of liquidation, and to apply the cash deposit rate that would be applicable if the product were determined to be covered by the scope of the order.

(2) If the Secretary issues an affirmative preliminary determination under paragraph (g)(1) of this section that the product at issue is covered by the scope of the order, the Secretary will take the following actions:

(i) The Secretary will direct U.S. Customs and Border Protection to continue the suspension of liquidation of previously suspended entries and apply the applicable cash deposit rate;

(ii) The Secretary will direct U.S. Customs and Border Protection to

begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption on or after the date of the publication of the notice of initiation of the circumvention inquiry; and

(iii)(A) *In general.* Subject to paragraph (1)(2)(iii)(B) of this section, if the Secretary determines that it is appropriate to do so, the Secretary may direct U.S. Customs and Border Protection to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption prior to the date of publication of the notice of initiation of the inquiry. The Secretary may take action under this provision at the timely request of an interested party or at the Secretary's discretion. In response to a timely request from an interested party, the Secretary will only consider an alternative date based on a specific argument supported by evidence establishing the appropriateness of that alternative date.

(B) *Exception.* If the Secretary has determined to address a covered merchandise referral (see § 351.227) in a circumvention inquiry under § 351.226, the rules of § 351.227(1)(2)(iii) will apply.

(3) If the Secretary issues an affirmative final determination under paragraph (g)(2) of this section that the product at issue is covered by the scope of the order, the following rules will apply:

(i) The Secretary will direct U.S. Customs and Border Protection to continue the suspension of liquidation of previously suspended entries and apply the applicable cash deposit rate until appropriate liquidation instructions are issued;

(ii) The Secretary will direct U.S. Customs and Border Protection to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of

initiation of the inquiry until appropriate liquidation instructions are issued; and

(iii)(A) *In general.* Subject to paragraph (1)(3)(iii)(B) of this section, if the Secretary determines that it is appropriate to do so, the Secretary may direct U.S. Customs and Border Protection to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption prior to the date of publication of the notice of initiation of the inquiry until appropriate liquidation instructions are issued. The Secretary may take action under this provision at the timely request of an interested party or at the Secretary's discretion. In response to a timely request from an interested party, the Secretary will only consider an alternative date based on a specific argument supported by evidence establishing the appropriateness of that alternative date.

(B) *Exception.* If the Secretary has determined to address a covered merchandise referral (see § 351.227) in a circumvention inquiry under § 351.226, the rules of § 351.227(1)(3)(iii) will apply.

(4) If the Secretary issues a negative final determination under paragraph (g)(2) of this section, and entries of the product are not otherwise subject to suspension of liquidation as a result of another segment of the proceeding, such as a covered merchandise inquiry under § 351.227, the Secretary will order U.S. Customs and Border Protection to terminate the suspension of liquidation and refund any cash deposits for such entries.

(5) Nothing in this section affects the U.S. Customs and Border Protection's authority to take any additional action with respect to the suspension of liquidation or related measures.

(m) *Applicability of circumvention determination; companion orders—(1) Applicability of circumvention determination.* In conducting a circumvention inquiry under this section, the Secretary shall consider, based on the available record evidence, the appropriate remedy to address circumvention and to prevent evasion of the order. Such remedies may include:

(i) The application of the determination on a producer-specific, exporter-specific, importer-specific basis, or some combination thereof;

(ii) The application of the determination on a country-wide basis to all products from the same country as the product at issue with the same relevant physical characteristics, (including chemical, dimensional and technical characteristics), regardless of producer, exporter, or importer of those products;

(iii) The application of the determination on a country-wide basis to all products from the same country as the product at issue with similar relevant physical characteristics, (including chemical, dimensional and technical characteristics), regardless of producer, exporter, or importer of those products; and

(iv) The implementation of a certification requirement under 19 CFR 351.228.

(2) *Companion antidumping and countervailing duty orders.* If there are companion antidumping and countervailing duty orders covering the same merchandise from the same country of origin, the requesting interested party under paragraph (c) of this section must file the request pertaining to both orders on the record of both the antidumping duty and countervailing duty segments of the proceeding. If the Secretary accepts the circumvention requests on both records under paragraph (d) of this section, the Secretary will notify the requesting interested party that all subsequent filings should be filed only on the record of the antidumping duty proceeding. If the Secretary determines to initiate a circumvention inquiry under paragraph (b) or (d) of this section, the Secretary will initiate and conduct a single inquiry with respect to the product at issue for both orders only on the record of the antidumping duty proceeding. Once the Secretary issues a final circumvention determination on the record of the antidumping duty proceeding, the Secretary will include on the record of the countervailing duty proceeding copies of the final circumvention determination memoranda, the final circumvention determination FEDERAL REGISTER notice,

the preliminary circumvention determination memoranda, the preliminary circumvention determination FEDERAL REGISTER notice, and all relevant instructions to U.S. Customs and Border Protection.

(n) *Service of circumvention inquiry request; annual inquiry service list; entry of appearance.* (1) The requirements of § 351.303(f) apply to this section, except that an interested party that submits a circumvention inquiry request under paragraph (c) of this section must serve a copy of that inquiry request on all persons on the annual inquiry service list for that order, as well as the companion order, if any, as described in paragraph (m)(2) of this section. The procedures and description pertaining to the “annual inquiry service list” are set forth in § 351.225(n)(1) through (3).

(2) Once a circumvention inquiry is self-initiated or a circumvention inquiry request is accepted by the Secretary, a segment-specific service list will be established and the requirements of § 351.303(f) will apply. Parties other than the interested party requesting a circumvention inquiry that wish to participate in the circumvention inquiry must file an entry of appearance in accordance with § 351.103(d)(1).

(o) *Suspended investigations; suspension agreements.* The Secretary may, in accordance with section 781 of the Act, apply the procedures set forth in this section in determining whether the product at issue circumvented a suspended investigation or a suspension agreement (see § 351.208).

[86 FR 52377, Sept. 20, 2021, as amended at 88 FR 67078, Sept. 29, 2023; 89 FR 20834, Mar. 25, 2024]

§ 351.227 Covered merchandise referrals.

(a) *Introduction.* The Trade Facilitation and Trade Enforcement Act of 2015 contains Title IV—Prevention of Evasion of Antidumping and Countervailing Duty Orders (short title “Enforce and Protect Act of 2015” or “EAPA”) (Pub. L. 114-125, sections 401, 421, 130 Stat. 122, 155, 161 (2016)). The Enforce and Protect Act of 2015 added section 517 to the Act, which established a new framework by which U.S. Customs and Border Protection can

conduct civil administrative investigations of potential duty evasion of an antidumping and/or countervailing duty order (referred to herein as an “EAPA investigation”). Section 517(b)(4)(A)(i) of the Act provides a procedure whereby if, during the course of an EAPA investigation, U.S. Customs and Border Protection is unable to determine whether the merchandise at issue is covered merchandise within the meaning of section 517(a)(3) of the Act, it shall refer the matter to the Secretary to make such a determination (referred to herein as a “covered merchandise referral”). Section 517(b)(4)(B) of the Act directs the Secretary to determine whether the merchandise is covered merchandise and promptly transmit the determination to U.S. Customs and Border Protection. The Secretary will consider a covered merchandise referral and issue a covered merchandise determination in accordance with the rules and procedures in this section. Unless otherwise specified, the procedures as described in subpart C of this part (§§ 351.301 through 351.308 and 351.312 through 351.313) apply to this section.

(b) *Actions with respect to covered merchandise referral.* (1) Within 20 days after acknowledging receipt of a covered merchandise referral from U.S. Customs and Border Protection pursuant to section 517(b)(4)(A)(i) of the Act that the Secretary determines to be sufficient, the Secretary will take one of the following actions.

(i) Initiate a covered merchandise inquiry; or

(ii) If the Secretary determines upon review of the covered merchandise referral that the issue can be addressed in an ongoing segment of the proceeding, such as a scope inquiry under § 351.225 or a circumvention inquiry under § 351.226, rather than initiating the covered merchandise inquiry, the Secretary will address the covered merchandise referral in such other segment.

(2) The Secretary will publish a notice of its action taken with respect to a covered merchandise referral under paragraph (b)(1) of this section in the FEDERAL REGISTER.

(c) *Deadlines for covered merchandise determinations—(1) In general.* When the

Secretary initiates a covered merchandise inquiry under paragraph (b)(1) of this section, the Secretary shall issue a final covered merchandise determination within 120 days from the date of publication of the notice of initiation.

(2) *Extension.* The Secretary may extend the deadline in paragraph (c)(1) of this section by no more than 150 days if the Secretary determines that good cause exists to warrant an extension. Situations in which good cause has been demonstrated may include:

(i) If the Secretary has issued questionnaires to interested parties; received responses to those questionnaires; and determined that an extension is warranted to request further information or consider and address the parties’ responses on the record adequately;

(ii) The Secretary has issued a preliminary covered merchandise determination (*see* paragraph (e)(1) of this section); or

(iii) The Secretary has determined to address a scope or circumvention issue from another segment of the proceeding involving the same or similar products in the covered merchandise inquiry, pursuant to § 351.225(d)(2) or (i) or § 351.226(f)(6)(iv).

(3) *Alignment with other segments.* If the Secretary determines it is appropriate to do so, the Secretary may align the deadlines under this paragraph with the deadlines of another segment of the proceeding.

(d) *Covered merchandise inquiry procedures.* The filing and timing restrictions of § 351.301(c) do not apply to this paragraph (d), and factual information submitted inconsistent with the terms of this paragraph (d) may be rejected as unsolicited and untimely.

(1) Within 30 days after the date of publication of the notice of an initiation of a covered merchandise inquiry under paragraph (b)(1) of this section, interested parties are permitted one opportunity to submit comments and factual information addressing the initiation. Within 14 days after the filing of such comments, any interested party is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information submitted by the other interested parties.

(2) Following initiation of a covered merchandise inquiry under paragraph (b)(1) of this section, the Secretary may issue questionnaires and verify submissions received, where appropriate. The Secretary may limit issuance of questionnaires to a reasonable number of respondents. Questionnaire responses are due on the date specified by the Secretary. Within 14 days after a questionnaire response has been filed with the Secretary, an interested party other than the original submitter is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information contained in the questionnaire response. Within 7 days of the filing of such rebuttal, clarification, or correction, the original submitter is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction.

(3) If the Secretary issues a preliminary covered merchandise determination under paragraph (e)(1) of this section, which is not issued concurrently with the initiation of a covered merchandise inquiry, the Secretary will establish a schedule for the filing of comments and rebuttal comments. Unless otherwise specified, any interested party may submit comments within 14 days after the issuance of the preliminary covered merchandise determination, and any interested party may submit rebuttal comments within 7 days thereafter. Unless otherwise specified, no new factual information will be accepted in the comments or rebuttal comments.

(4) If the Secretary issues a preliminary covered merchandise determination concurrently with the initiation of the covered merchandise inquiry under paragraph (e)(1) of this section, paragraphs (d)(1) through (3) will not apply. In such a situation, the Secretary will establish appropriate procedures on a case-specific basis.

(5) If the Secretary determines it appropriate to do so, the Secretary may rescind, in whole or in part, a covered merchandise inquiry under this section and will notify interested parties. Situations in which the Secretary may re-

scind a covered merchandise inquiry include:

(i) The U.S. Customs and Border Protection withdraws its request for a covered merchandise inquiry under paragraph (b) of this section; or

(ii) The Secretary has initiated a scope inquiry under § 351.225 or a circumvention inquiry under § 351.226 and determines that it can address the covered merchandise referral in such other segment of the proceeding.

(6) If the Secretary determines it is appropriate to do so, the Secretary may alter or extend any time limits under this paragraph or establish a separate schedule for the filing of comments and/or factual information during the covered merchandise inquiry.

(7) During the pendency of a covered merchandise inquiry or upon issuance of a final covered merchandise determination under paragraph (e)(2) of this section, the Secretary may take any further action, as appropriate, with respect to another segment of the proceeding. For example, if the Secretary considers it appropriate, the Secretary may request information concerning the product that is the subject of the covered merchandise inquiry for purpose of an administrative review under § 351.213.

(e) *Covered merchandise determinations*—(1) *Preliminary determination.* The Secretary may issue a preliminary determination, based upon the available information at the time, as to whether there is a reasonable basis to believe or suspect that the product that is the subject of the covered merchandise inquiry is covered by the scope of the order. In determining whether to issue a preliminary determination, the Secretary may consider the complexity of the issues and arguments raised in the context of the covered merchandise inquiry. The preliminary determination will be published in the FEDERAL REGISTER. The Secretary may publish notice of a preliminary determination concurrently with the notice of initiation of a covered merchandise inquiry under paragraph (b)(1) of this section.

(2) *Final determination.* The Secretary will issue a final determination as to whether the product that is the subject of the covered merchandise inquiry is covered by the scope of the order. As

part of its determination, the Secretary will include an explanation of the factual and legal conclusions on which the final determination is based. The final determination will be published in the FEDERAL REGISTER. Promptly after publication, the Secretary will:

(i) Convey a copy of the final determination in the manner prescribed by section 516A(a)(2)(A)(ii) of the Act to all parties to the proceeding (see § 351.102(b)(36)); and

(ii) Transmit a copy of the final covered merchandise determination to U.S. Customs and Border Protection in accordance with section 517(b)(4)(B) of the Act.

(3) *Covered merchandise determinations in other segments of the proceeding.* If the Secretary addresses the covered merchandise referral in another segment of the proceeding as provided for under paragraph (b)(2) or (d)(5)(ii) of this section, the Secretary will promptly transmit a copy of the final action in that segment to U.S. Customs and Border Protection in accordance with section 517(b)(4)(B) of the Act.

(f) *Basis for covered merchandise determination.* In determining whether a product is covered by the scope of the order under this section, the Secretary may utilize the analysis described in paragraphs (j) and (k) of § 351.225 or any provision under section 781 of the Act (paragraph (h), (i), (j), or (k) of § 351.226).

(g)–(k) [Reserved]

(1) *Suspension of liquidation.* (1) When the Secretary publishes a notice of initiation of a covered merchandise inquiry under paragraph (b)(1) of this section, the Secretary will notify U.S. Customs and Border Protection of the initiation and direct U.S. Customs and Border Protection to continue the suspension of liquidation of entries of products subject to the covered merchandise inquiry that were already subject to the suspension of liquidation, and to apply the cash deposit rate that would be applicable if the product were determined to be covered by the scope of the order. Such suspension shall include, but shall not be limited to, entries covered by a final results of administrative review of an antidumping or countervailing duty order

pursuant to § 351.212(b), automatic assessment pursuant to § 351.212(c), and a rescinded administrative review pursuant to § 351.213(d), as well as any other entries already suspended by U.S. Customs and Border Protection under the antidumping and countervailing duty laws which have not yet been liquidated in accordance with 19 CFR part 159.

(2) If the Secretary issues an affirmative preliminary covered merchandise determination under paragraph (e)(1) of this section that the product at issue is covered by the scope of the order, the Secretary will take the following actions:

(i) The Secretary will direct U.S. Customs and Border Protection to continue the suspension of liquidation of previously suspended entries and apply the applicable cash deposit rate;

(ii) The Secretary will direct U.S. Customs and Border Protection to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of initiation of the covered merchandise inquiry; and

(iii) The Secretary normally will direct U.S. Customs and Border Protection to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption prior to the date of publication of the notice of initiation of the covered merchandise inquiry.

(3) If the Secretary issues an affirmative final covered merchandise determination under paragraph (e)(2) of this section that the product at issue is covered by the scope of the order, the Secretary will take the following actions:

(i) The Secretary will direct U.S. Customs and Border Protection to continue the suspension of liquidation of previously suspended entries and apply the applicable cash deposit rate until appropriate liquidation instructions are issued;

(ii) The Secretary will direct U.S. Customs and Border Protection to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of initiation of the covered merchandise inquiry until appropriate liquidation instructions are issued; and

(iii) The Secretary normally will direct U.S. Customs and Border Protection to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption prior to the date of publication of the notice of initiation of the covered merchandise inquiry until appropriate liquidation instructions are issued.

(4) If the Secretary issues a negative final covered merchandise determination under paragraph (e)(2) of this section that the product at issue is not covered by the scope of the order, and entries of the product at issue are not otherwise subject to suspension of liquidation as a result of another segment of a proceeding, such as a circumvention inquiry under § 351.226, the Secretary will direct U.S. Customs and Border Protection to terminate the suspension of liquidation and refund any cash deposits for such entries.

(5) Nothing in this section affects the U.S. Customs and Border Protection's authority to take any additional action with respect to the suspension of liquidation or related measures.

(m) *Applicability of covered merchandise determination; companion orders*—(1) *Applicability of covered merchandise determination.* In conducting a covered merchandise inquiry under this section, the Secretary shall consider, based on the available record evidence, whether the covered merchandise determination should be applied:

(i) On a producer-specific, exporter-specific, importer-specific basis, or some combination thereof; or

(ii) To all products from the same country with the same relevant physical characteristics, (including chem-

ical, dimensional and technical characteristics) as the product at issue, on a country-wide basis, regardless of the producer, exporter or importer of those products.

(2) *Companion antidumping and countervailing duty orders.* If there are companion antidumping and countervailing duty orders covering the same merchandise from the same country of origin, and the Secretary determines to initiate a covered merchandise inquiry under paragraph (b)(1) of this section, the Secretary will initiate and conduct a single inquiry with respect to the product at issue only on the record of the antidumping duty proceeding. Once the Secretary issues a final covered merchandise determination on the record of the antidumping duty proceeding, the Secretary will include on the record of the countervailing duty proceeding a copy of the final covered merchandise determination memoranda, the final covered merchandise determination FEDERAL REGISTER notice, the preliminary covered merchandise determination memoranda and preliminary covered merchandise determination FEDERAL REGISTER notice, if a preliminary determination was issued, and all relevant instructions to U.S. Customs and Border Protection.

(n) *Service list.* Once the Secretary initiates a covered merchandise inquiry under paragraph (b)(1) of this section, a segment-specific service list will be established and the requirements of § 351.303(f) will apply. Parties other than those relevant parties identified by U.S. Customs and Border Protection in the covered merchandise referral that wish to participate in the covered merchandise inquiry must file an entry of appearance in accordance with § 351.103(d)(1).

(o) *Suspended investigations; suspension agreements.* The Secretary may apply the procedures set forth in this section in determining whether the product at issue is covered merchandise with respect to a suspended investigation or a suspension agreement (*see* § 351.208).

[86 FR 52381, Sept. 20, 2021, as amended at 88 FR 67078, Sept. 29, 2023; 89 FR 20835, Mar. 25, 2024]

§ 351.228 Certification by importer or other interested party.

(a) *Certification requirements.* (1) The Secretary may determine in the context of an antidumping or countervailing duty proceeding that an importer or other interested party shall:

- (i) Maintain a certification for entries of merchandise into the customs territory of the United States;
- (ii) Provide a certification by electronic means at the time of entry or entry summary; or
- (iii) Otherwise demonstrate compliance with a certification requirement as determined by the Secretary, in consultation with U.S. Customs and Border Protection.

(2) Where the certification is required to be maintained by the importer or other interested party under paragraph (a)(1) of this section, the Secretary and/or U.S. Customs and Border Protection may require the importer or other interested party to provide such a certification to the requesting agency upon request.

(b) *Consequences for no provision of a certificate; provision of a false certificate.*

(1) The Secretary may instruct U.S. Customs and Border Protection to suspend liquidation of entries of the importer or entries associated with the other interested party and require a cash deposit of estimated duties at the applicable rate if:

(i) The importer or other interested party has not provided to the Secretary or U.S. Customs and Border Protection, as appropriate, the certification described under paragraph (a) of this section either as required or upon request for such entries; or

(ii) The importer or other interested party provided a certification in accordance with paragraph (a) of this section for such entries, but the certification contained materially false, fictitious or fraudulent statements or representations, or contained material omissions.

(2) Under paragraph (b)(1)(i) or (ii) of this section, the Secretary may also instruct U.S. Customs and Border Protection to assess antidumping or countervailing duties, as the case may be, at the applicable rate.

[86 FR 52383, Sept. 20, 2021]

Subpart C—Information and Argument

§ 351.301 Time limits for submission of factual information.

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

(b) *Submission of factual information.* Every submission of factual information must be accompanied by a written explanation identifying the subsection of § 351.102(b)(21) under which the information is being submitted.

(1) If an interested party states that the information is submitted under § 351.102(b)(21)(v), the party must explain why the information does not satisfy the definitions described in § 351.102(b)(21)(i)–(iv).

(2) If the factual information is being submitted to rebut, clarify, or correct factual information on the record, the

submitter must provide a written explanation identifying the information which is already on the record that the factual information seeks to rebut, clarify or correct, including the name of the interested party that submitted the information and the date on which the information was submitted. The submitter must also provide a written explanation describing how the factual information provided under this paragraph rebuts, clarifies, or corrects the factual information already on the record.

(c) *Time limits.* The type of factual information determines the time limit for submission to the Department.

(1) *Factual information submitted in response to questionnaires.* During a proceeding, the Secretary may issue to any person questionnaires, which includes both initial and supplemental questionnaires. The Secretary will not consider or retain in the official record of the proceeding unsolicited questionnaire responses, except as provided under §351.109(h)(2), or untimely filed questionnaire responses. The Secretary will reject any untimely filed or unsolicited questionnaire response and provide, to the extent practicable, written notice stating the reasons for rejection (see §351.302(d)).

(i) Initial questionnaire responses are due 30 days from the date of receipt of such 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 general, the date of receipt will be considered to be seven days from the date on which the initial questionnaire was transmitted.

(ii) Supplemental questionnaire responses are due on the date specified by the Secretary.

(iii) 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 to be submitted in writing within 14 days after the date of the questionnaire or, if the questionnaire is due in 14 days or less, within the time specified by the Secretary.

(iv) 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.

(v) Factual information submitted to rebut, clarify, or correct questionnaire responses. Within 14 days after an initial questionnaire response and within 10 days after a supplemental questionnaire response has been filed with the Department, an interested party other than the original submitter is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information contained in the questionnaire response. Within seven days of the filing of such rebuttal, clarification, or correction to a questionnaire response, the original submitter of the questionnaire response is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction. The Secretary will reject any untimely filed rebuttal, clarification, or correction submission and provide, to the extent practicable, written notice stating the reasons for rejection (see §351.302). If insufficient time remains before the due date for the final determination or final results of review, the Secretary may specify shorter deadlines under this section.

(2) *Factual information submitted in support of allegations.* Factual information submitted in support of allegations must be accompanied by a summary, not to exceed five pages, of the allegation and supporting data.

(i) *Market viability and the basis for determining normal value.* Allegations regarding market viability in an anti-dumping investigation or administrative review, including the exceptions in §351.404(c)(2), are due, with all supporting factual information, 10 days after the respondent interested party files the response to the relevant section of the questionnaire, unless the Secretary alters this time limit.

(ii) *Sales at prices below the cost of production.* Allegations of sales at prices below the cost of production made by

the petitioner or other domestic interested party are due within:

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

(B) 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

(C) 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.

(iii) *Purchases of major inputs from an affiliated party at prices below the affiliated party's cost of production.* An allegation of purchases of major inputs from an affiliated party at prices below the affiliated party's cost of production made by the petitioner or other domestic interested party is due within 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 limits.

(iv) *Countervailable subsidy; upstream subsidy.* 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, unless the Secretary extends this time limit for good cause; 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.

(C) 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 60 days after the date of the preliminary determination.

(v) *Other allegations.* An interested party may submit factual information in support of other allegations not specified in paragraphs (c)(2)(i)-(iv) of this section. Upon receipt of factual information under this subsection, the Secretary will issue a memorandum accepting or rejecting the information and, to the extent practicable, will provide written notice stating the reasons for rejection. If the Secretary accepts the information, the Secretary will issue a schedule providing deadlines for submission of factual information to rebut, clarify or correct the factual information.

(vi) *Rebuttal, clarification, or correction of factual information submitted in support of allegations.* An interested party is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information submitted in support of allegations 10 days after the date such factual information is filed with the Department.

(3) *Factual information submitted to value factors under § 351.408(c) or to measure the adequacy of remuneration under § 351.511(a)(2).*

(i) *Antidumping and countervailing duty investigations.* (A) All submissions of factual information to value factors of production under § 351.408(c) in an antidumping investigation are due no later than 60 days before the scheduled date of the preliminary determination.

(B) All submissions of factual information to measure the adequacy of remuneration under § 351.511(a)(2) in a countervailing duty investigation are due no later than 45 days before the scheduled date of the preliminary determination.

(C) If the Secretary determines that interested parties will not have sufficient time to submit factual information under the deadlines set forth in paragraph (c)(3)(i)(A) or (B) because of

circumstances unique to a given segment of a proceeding, the Secretary may issue a schedule with alternative deadlines for parties to submit factual information on the record.

(ii) *Administrative reviews, new shipper reviews, and changed circumstances reviews.* (A) All submissions of factual information to value factors under § 351.408(c) or to measure the adequacy of remuneration under § 351.511(a)(2) in administrative reviews, new shipper reviews and changed circumstances reviews are due no later than 60 days before the scheduled date of the preliminary results of review.

(B) If the Secretary determines that interested parties will not have sufficient time to submit factual information under the deadlines set forth in paragraph (c)(3)(ii)(A) of this section because of circumstances unique to a given segment of a proceeding, the Secretary may issue a schedule with alternative deadlines for parties to submit factual information on the record.

(iii) *Expedited antidumping review.* All submissions of factual information to value factors under § 351.408(c) are due on a date specified by the Secretary.

(iv) *Rebuttal, clarification, or correction of factual information submitted to value factors under § 351.408(c) or to measure the adequacy of remuneration under § 351.511(a)(2).* An interested party is permitted one opportunity to submit publicly available information to rebut, clarify, or correct such factual information submitted pursuant to § 351.408(c) or § 351.511(a)(2) 10 days after the date such factual information is filed with the Department. An interested party may not submit additional, previously absent-from-the-record alternative surrogate value information under this paragraph (c)(3)(iv). Additionally, all factual information submitted under this paragraph (c)(3)(iv) must be accompanied by a written explanation identifying what information already on the record of the ongoing proceeding the factual information is rebutting, clarifying, or correcting. Information submitted to rebut, clarify, or correct factual information submitted pursuant to § 351.408(c) will not be used to value factors under § 351.408(c).

(4) *Factual information placed on the record of the proceeding by the Department.* The Department may place factual information on the record of the proceeding at any time. An interested party is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information placed on the record of the proceeding by the Department by a date specified by the Secretary.

(5) *Factual information not directly responsive to or relating to paragraphs (c)(1)–(4) of this section.* Paragraph (c)(5) applies to factual information other than that described in § 351.102(b)(21)(i)–(iv). The Secretary will reject information filed under paragraph (c)(5) that satisfies the definition of information described in § 351.102(b)(21)(i)–(iv) and that was not filed within the deadlines specified above. All submissions of factual information under this subsection are required to clearly explain why the information contained therein does not meet the definition of factual information described in § 351.102(b)(21)(i)–(iv), and must provide a detailed narrative of exactly what information is contained in the submission and why it should be considered. The deadline for filing such information will be 30 days before the scheduled date of the preliminary determination in an investigation, or 14 days before verification, whichever is earlier, and 30 days before the scheduled date of the preliminary results in an administrative review, or 14 days before verification, whichever is earlier.

(i) Upon receipt of factual information under this subsection, the Secretary will issue a memorandum accepting or rejecting the information and, to the extent practicable, will provide written notice stating the reasons for rejection.

(ii) If the Secretary accepts the information, the Secretary will issue a schedule providing deadlines for submission of factual information to rebut, clarify or correct the factual information.

(6) *Notices of subsequent authority—(i) In general.* If a United States Federal court issues a decision, or the Secretary in another segment or proceeding issues a determination, that an

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interested party believes is directly relevant to an issue in an ongoing segment of the proceeding, that interested party may submit a Notice of Subsequent Authority with the Secretary. Responsive comments and factual information to rebut or clarify the Notice of Subsequent Authority must be submitted by interested parties no later than five days after the submission of a Notice of Subsequent Authority.

(ii) *Timing restrictions for consideration.* The Secretary will consider and address a Notice of Subsequent Authority in its final determinations or final results which is submitted no later than 30 days after the alleged subsequent authority was issued and no later than 30 days before the deadline for issuing the final determination or results. Rebuttal submissions must be filed no later than 25 days before the deadline for issuing the final determinations or results. Given statutory deadlines for administrative proceedings, the Secretary may be unable to consider and address the arguments and applicability of alleged subsequent authorities adequately in a final determination or final results if a Notice of Subsequent Authority or rebuttal submission is submitted later in the segment of the proceeding.

(iii) *Contents of a notice of subsequent authority and responsive submissions.* A Notice of Subsequent Authority must identify the Federal court decision or determination by the Secretary in another segment or proceeding that is alleged to be authoritative to an issue in the ongoing segment of the proceeding, provide the date the decision or determination was issued, explain the relevance of that decision or determination to an issue in the ongoing segment of the proceeding, and be accompanied by a complete copy of the Federal court decision or agency determination. Responsive comments must directly address the contents of the Notice of Subsequent Authority and must explain how the responsive comments and any accompanying factual infor-

mation rebut or clarify the Notice of Subsequent Authority.

[78 FR 21254, Apr. 10, 2013, as amended at 88 FR 67078, Sept. 29, 2023; 89 FR 20835, Mar. 25, 2024; 89 FR 101763, Dec. 16, 2024; 90 FR 14206, Mar. 31, 2025]

§ 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 rejected together with an explanation of the reasons for the rejection 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 established under this part expires, a party may request an extension pursuant to paragraph (b) of this section. An untimely filed extension request will not be considered unless the party demonstrates that an extraordinary circumstance exists. The request must be in writing, in a separate, stand-alone submission, filed consistent with § 351.303, and state the reasons for the request. An extension granted to a party must be approved in writing.

(1) An extension request will be considered untimely if it is received after the applicable time limit expires or as otherwise specified by the Secretary.

(2) An extraordinary circumstance is an unexpected event that:

(i) Could not have been prevented if reasonable measures had been taken, and

(ii) Precludes a party or its representative from timely filing an extension request through all reasonable means.

(d) *Rejection 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 rejects, except as provided under § 351.104(a)(2); or

(ii) Unsolicited questionnaire responses, except as provided for voluntary respondents under § 351.109(h)(2).

(2) The Secretary will reject such information, argument, or other material, or unsolicited questionnaire response with, to the extent practicable, written notice stating the reasons for rejection.

[62 FR 27379, May 19, 1997, as amended at 76 FR 39275, July 6, 2011; 78 FR 57795, Sept. 20, 2013; 89 FR 101763, Dec. 16, 2024]

§ 351.303 Filing, document identification, format, translation, service, and certification of documents.

(a) *Introduction.* This section contains the procedural rules regarding filing, document identification, format, service, translation, and certification of documents and applies to all persons submitting documents to the Department for consideration in an anti-dumping or countervailing duty proceeding.

(b) *Filing*—(1) *In general.* Persons must address all documents to the Secretary of Commerce, Attention: Enforcement and Compliance, APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5 p.m. Eastern Time on the due date. Where applicable, a submitter must manually file a document between the hours of 8:30 a.m. and 5 p.m. Eastern Time on business days (see § 351.103(b)). For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day. A manually filed document must be accompanied by a cover sheet generated in ACCESS, in accordance with § 351.303(b)(3).

(2) *Filing of documents and databases*—(i) *Electronic filing.* A person must file all documents and databases electronically using ACCESS at <https://access.trade.gov>. A person making a filing

must comply with the procedures set forth in the ACCESS Handbook on Electronic Filing Procedures, which is available on the ACCESS Web site at <https://access.trade.gov>.

(ii) *Manual filing.* (A) Notwithstanding § 351.303(b)(2)(i), a person must manually file a data file that exceeds the file size limit specified in the ACCESS Handbook on Electronic Filing Procedures and as referenced in § 351.303(c)(3), and the data file must be accompanied by a cover sheet described in § 351.303(b)(3). A person may manually file a bulky document. If a person elects to manually file a bulky document, it must be accompanied by a cover sheet described in § 351.303(b)(3). The Department both provides specifications for large data files and defines bulky document standards in the ACCESS Handbook on Electronic Filing Procedures, which is available on the ACCESS Web site at <https://access.trade.gov>.

(B) [Reserved]

(3) *Cover sheet.* When manually filing a document, parties must complete the cover sheet (as described in the ACCESS Handbook on Electronic Filing Procedures) online at <https://access.trade.gov> and print the cover sheet for submission to the APO/Dockets Unit.

(4) *Document identification.* Each document must be clearly identified as one of the following five document classifications and must conform with the requirements under paragraph (d)(2) of this section. Business proprietary document or business proprietary/APO version, as applicable, means a document or a version of a document containing information for which a person claims business proprietary treatment under § 351.304.

(i) Business Proprietary Document—May be Released Under APO. This business proprietary document contains single-bracketed business proprietary information that the submitter agrees to release under APO. It must contain the statement “May be Released Under APO” in accordance with the requirements under paragraph (d)(2)(v) of this section.

(ii) Business Proprietary Document—May Not be Released Under APO. This

business proprietary document contains double-bracketed business proprietary information that the submitter does not agree to release under APO. This document must contain the statement “May Not be Released Under APO” in accordance with the requirements under paragraph (d)(2)(v) of this section. This type of document may contain single-bracketed business proprietary information in addition to double-bracketed business proprietary information.

(iii) *Business Proprietary/APO Version—May be Released Under APO.* In the event that a business proprietary document contains both single- and double-bracketed business proprietary information, the submitting person must submit a version of the document with the double-bracketed business proprietary information omitted. This version must contain the single-bracketed business proprietary information that the submitter agrees to release under APO. This version must be identified as “Business Proprietary/APO Version” and must contain the statement “May be Released Under APO” in accordance with the requirements under paragraph (d)(2)(v) of this section.

(iv) *Public version.* The public version excludes all business proprietary information, whether single- or double-bracketed. Specific filing requirements for public version submissions are discussed in §351.304(c).

(v) *Public document.* The public document contains only public information. There is no corresponding business proprietary document for a public document.

(c) *Filing of business proprietary documents and public versions under the one-day lag rule; information in double brackets.*

(1) *In general.* If a submission contains information for which the submitter claims business proprietary treatment, the submitter may elect to file the submission under the one-day lag rule described in paragraph (c)(2) of this section. A petition, an amendment to a petition, and any other submission filed prior to the initiation of an investigation shall not be filed under the one-day lag rule. The business proprietary document and public version of

such pre-initiation submissions must be filed simultaneously on the same day.

(2) *Application of the one-day lag rule—*
(i) *Filing the business proprietary document.* A person must file a business proprietary document with the Department within the applicable time limit.

(ii) *Filing of final business proprietary document; bracketing corrections.* By the close of business one business day after the date the business proprietary document is filed under paragraph (c)(2)(i) of this section, a person must file the complete final business proprietary document with the Department. The final business proprietary document must be identical in all respects to the business proprietary document filed on the previous day except for any bracketing corrections and the omission of the warning “Bracketing of Business Proprietary Information Is Not Final for One Business Day After Date of Filing” in accordance with paragraph (d)(2)(v) of this section.

(iii) *Filing the public version.* Simultaneously with the filing of the final business proprietary document under paragraph (c)(2)(ii) of this section, a person also must file 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/APO version of a document that excludes information in double brackets pursuant to §§351.303(b)(4)(iii) and 351.304(b)(2), the person simultaneously must file with the Department the complete business proprietary/APO version of the document from which information in double brackets has been excluded.

(3) *Sales files, cost of production files and other electronic databases.* When a submission includes sales files, cost of production files or other electronic databases, such electronic databases must be filed electronically in accordance with paragraph (b)(2) of this section. If a submitter must file the database manually pursuant to §351.303(b)(2)(ii)(A), the submitter must file such information on the computer medium specified by the Department’s request for such information. The submitter need not accompany the computer medium with a paper printout.

All electronic database information must be releasable under APO (see § 351.305). A submitter need not include brackets in an electronic database containing business proprietary information. The submitter's selection of the security classification "Business Proprietary Document—May Be Released Under APO" at the time of filing indicates the submitter's request for business proprietary treatment of the information contained in the database. Where possible, the submitter must insert headers or footers requesting business proprietary treatment of the information on the databases for printing purposes. A submitter must submit a public version of a database in pdf format. The public version of the database must be publicly summarized and ranged in accordance with § 351.304(c).

(d) *Format of submissions*—(1) *In general*. Unless the Secretary alters the requirements of this section, a document filed with the Department must conform to the specification and marking requirements under paragraph (d)(2) of this section or the Secretary may reject such document in accordance with § 351.104(a).

(2) *Specifications and markings*. If a document is filed manually, it must be on letter-size (8½ × 11 inch) paper, single-sided and double-spaced, bound with a paper clip, butterfly/binder clip, or rubber band. The filing of stapled, spiral, velo, or other type of solid binding is not permitted. In accordance with paragraph (b)(3) of this section, a cover sheet must be placed before the first page of the document. Electronically filed documents must be formatted to print on letter-size (8½ × 11 inch) paper and double-spaced. Spreadsheets, unusually sized exhibits, and databases are best utilized in their original printing format and should not be reformatted for submission. 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 the specific segment of the proceeding, (*e.g.*, investigation, administrative review, scope inquiry, suspension agreement, *etc.*) and, if applicable, indicate the complete period of review (MM/DD/YY–MM/DD/YY);

(iv) On the fourth line, except for a petition, 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: "Business Proprietary Document—May Be Released Under APO," "Business Proprietary Document—May Not Be Released Under APO," or "Business Proprietary/APO Version—May Be Released Under APO," as applicable, and consistent with § 351.303(b)(4). Indicate "Business Proprietary Treatment Requested" on the top of each page containing business proprietary information. In addition, include the warning "Bracketing of Business Proprietary Information Is Not Final for One Business Day After Date of Filing" on the top of each page containing business proprietary information in the business proprietary document filed under paragraph (c)(2)(i) of this section (one-day lag rule). Do not include this warning in the final business proprietary document filed on the next business day under paragraph (c)(2)(ii) of this section (see § 351.303(c)(2) and § 351.304(c)); and

(vi) For the public version of a business proprietary document 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."

(vii) For a public document, complete the marking as required in paragraphs (d)(2)(i)–(v) of this section for the business proprietary document or version, as applicable, but conspicuously mark the first page "Public Document."

(e) *Translation to English*. A document submitted in a foreign language must be accompanied by an English translation of the entire document or of only pertinent portions, where appropriate, unless the Secretary waives this

requirement for an individual document. A party must obtain the Department's approval for submission of an English translation of only portions of a document prior to submission to the Department.

(f) *Service of copies on other persons—*

(1) *In general.* Generally, a person filing a document with the Department simultaneously must serve a copy of the document on all other persons on the service list. Except as provided in § 351.202(c) (filing of petition), § 351.208(f)(1) (submission of proposed suspension agreement) and paragraph (f)(2) of this section:

(i) Service of a public document or public version of a business proprietary document is effectuated on the persons on the public service list upon the electronic filing of the submission in ACCESS, unless it is filed manually in accordance with paragraph (b)(2) of this section, or ACCESS is unavailable. If a submission is filed manually or ACCESS is unavailable, paragraph (f)(1)(iii) of this section is applicable.

(ii)(A) Service of a business proprietary document is effectuated on the persons on the APO service list upon the electronic filing of the submission in ACCESS, unless it is filed manually in accordance with paragraph (b)(2) of this section, or ACCESS is unavailable. If a submission is filed manually or ACCESS is unavailable, paragraph (f)(1)(iii) of this section is applicable. In addition, a business proprietary document submitted under the one-day lag rule under paragraph (c)(2)(i) of this section must be served in accordance with paragraph (f)(1)(iii) of this section.

(B) If the document contains the business proprietary information of a person who is not included on the APO service list, then service of such documents on that person cannot be effectuated on ACCESS and the submitter must serve that person its own business proprietary information in accordance with paragraph (f)(1)(iii) of this section. In addition, specific service requirements under § 351.306(c)(2) are applicable.

(iii) If service of a public document, public version of a business proprietary document, or a business proprietary document cannot be effectuated on AC-

CESS, the submitter must serve the recipient by electronic transmission. Generally, a business proprietary document must be served by secure electronic transmission. If the submitter is not able to use such a method, it may use an acceptable alternative method of service, including personal service, first-class mail, or electronic mail. Electronic mail may only be used as an acceptable alternative method of service for a business proprietary document under paragraph (f)(1)(ii)(B) of this section if the business proprietary document contains the business proprietary information of either the submitter or the recipient, with the consent of the recipient.

(2) *Service requirements for certain documents—(i) Request for review.* In addition to the certificate of service requirements under paragraph (f)(3) 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 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. Service may be made by an electronic transmission method if the interested party that files the request has an electronic mail address for the recipient; otherwise, service must be made by personal service or first-class mail. 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.

(ii) *Scope and circumvention.* In addition to the certificate of service requirements under paragraph (f)(3) of this section, an interested party that files with the Department a scope ruling application or a request for a circumvention inquiry must serve a copy of the request on all persons included in the annual inquiry service list in accordance with §§ 351.225(n) and 351.226(n), respectively.

(3) *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.

(4) Notwithstanding any other paragraph in this section, until further notice, as of March 24, 2020, we are modifying the service requirements with respect to documents containing business proprietary information as follows:

(i) For BPI documents submitted with final bracketing on the due date (*i.e.*, documents not submitted under the one-day lag rule, paragraph (c)(2)(i) of this section), E&C will deem service to be effectuated upon filing of the submission in ACCESS. E&C will notify interested parties that the document has been filed through daily ACCESS BPI Release Digest emails. This paragraph (f)(4)(i) does not apply to service to pro se parties or parties represented by a non-APO-authorized representative.

(ii) For BPI documents submitted under the one-day lag rule, paragraph (c)(2)(i) of this section, E&C is temporarily waiving the service requirement for bracketing-not-final BPI submissions filed on the due date. In addition, E&C will deem service to be effectuated upon the filing in ACCESS of the complete final BPI document on the next business day under paragraph (c)(2)(ii) of this section. This paragraph (f)(4)(ii) does not apply to service to pro se parties or parties represented by a non-APO-authorized representative.

(iii) For case and rebuttal briefs served pursuant to paragraph (f)(3)(i) of this section, service of BPI case and rebuttal briefs will be deemed effectuated via ACCESS. This paragraph (f)(4)(iii) does not apply to service to pro se parties or parties represented by a non-APO-authorized representative.

(iv) Parties must still take active steps to serve pro se parties BPI documents containing only the pro se party's BPI and serve parties represented by a non-APO-authorized representative documents containing only that party's BPI, consistent with § 351.306(c)(2). However, E&C is tempo-

rarily modifying the electronic service provision under paragraph (f)(1)(ii) of this section, so that a pro se party may give consent to another interested party to serve a document electronically on that pro se party only, provided that the document only contains the pro se party's BPI. Such a document must not contain the BPI of other parties. In addition, a party represented by a non-APO-authorized representative may give consent to another interested party to serve a document electronically on that non-APO-authorized representative only, provided that the document only contains the BPI of the party represented by that non-APO-authorized representative. Such a document must not contain the BPI of other parties. If such consent is given, then the serving party's APO-authorized representative may serve the submission on that party via electronic transmission with that recipient's consent.

(v) *Exceptions.* Notwithstanding paragraphs (f)(4)(i) through (iv) of this section, the following types of submissions and scenarios require the normal means of service as required by this paragraph (f):

(A) Requests for administrative review, new shipper review, changed circumstances review and expedited review.

(B) Requests for scope ruling or anti-circumvention inquiry.

(g) *Certifications.* Each submission containing factual information must include the following certification from the person identified in paragraph (g)(1) of this section and, in addition, if the person has legal counsel or another representative, the certification in paragraph (g)(2) of this section. The certifying party must maintain the original signed certification for a period of five years from the date of filing the submission to which the certification pertains. The original signed certification must be available for inspection by U.S. Department of Commerce officials. Copies of the certifications must be included in the submission filed at the Department.

(1) For the person(s) officially responsible for presentation of the factual information:

(i) COMPANY CERTIFICATION *

I, (PRINTED NAME AND TITLE), currently employed by (COMPANY NAME), certify that I prepared or otherwise supervised the preparation of the attached submission of (IDENTIFY THE SPECIFIC SUBMISSION BY TITLE) due on (DATE) OR filed on (DATE) pursuant to the (INSERT ONE OF THE FOLLOWING OPTIONS IN { }): {THE (ANTIDUMPING OR COUNTERVAILING) DUTY INVESTIGATION OF (PRODUCT) FROM (COUNTRY) (CASE NUMBER)} or {THE (DATES OF PERIOD OF REVIEW) (ADMINISTRATIVE OR NEW SHIPPER) REVIEW UNDER THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER)} or {THE (SUNSET REVIEW OR CHANGED CIRCUMSTANCE REVIEW OR SCOPE RULING OR CIRCUMVENTION INQUIRY) OF THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER)}}. I certify that the public information and any business proprietary information of (CERTIFIER'S COMPANY NAME) contained in this submission is accurate and complete to the best of my knowledge. I am aware that the information contained in this submission may be subject to verification or corroboration (as appropriate) by the U.S. Department of Commerce. I am also aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signature: _____
Date: _____

*For multiple person certifications, all persons should be listed in the first sentence of the certification and all persons should sign and date the certification. In addition, singular pronouns and possessive adjectives should be changed accordingly, *e.g.*, "I" should be changed to "we" and "my knowledge" should be changed to "our knowledge."

(ii) GOVERNMENT CERTIFICATION**

I, (PRINTED NAME AND TITLE), currently employed by the government of (COUNTRY), certify that I prepared or otherwise supervised the preparation of the attached submission of (IDENTIFY THE SPE-

CIFIC SUBMISSION BY TITLE) due on (DATE) OR filed on (DATE) pursuant to the (INSERT ONE OF THE FOLLOWING OPTIONS IN { }): {THE (ANTIDUMPING OR COUNTERVAILING) DUTY INVESTIGATION OF (PRODUCT) FROM (COUNTRY) (CASE NUMBER)} or {THE (DATES OF PERIOD OF REVIEW) (ADMINISTRATIVE OR NEW SHIPPER) REVIEW UNDER THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER)} or {THE (SUNSET REVIEW OR CHANGED CIRCUMSTANCE REVIEW OR SCOPE RULING OR CIRCUMVENTION INQUIRY) OF THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER)}}. I certify that the public information and any business proprietary information of the government of (COUNTRY) contained in this submission is accurate and complete to the best of my knowledge. I am aware that the information contained in this submission may be subject to verification or corroboration (as appropriate) by the U.S. Department of Commerce. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signature: _____
Date: _____

**For multiple person certifications, all persons should be listed in the first sentence of the certification and all persons should sign and date the certification. In addition, singular pronouns and possessive adjectives should be changed accordingly, *e.g.*, "I" should be changed to "we" and "my knowledge" should be changed to "our knowledge."

(2) For the legal counsel or other representative:

REPRESENTATIVE CERTIFICATION * * *

I, (PRINTED NAME), with (LAW FIRM or OTHER FIRM), (INSERT ONE OF THE FOLLOWING OPTIONS IN { }): {COUNSEL TO} or {REPRESENTATIVE OF} (COMPANY NAME, OR GOVERNMENT OF COUNTRY, OR NAME OF ANOTHER PARTY), certify that I have read the attached submission of (IDENTIFY THE SPECIFIC SUBMISSION BY TITLE) due on (DATE) OR filed on (DATE) pursuant to the (INSERT ONE OF THE FOLLOWING OPTIONS IN { }): {THE (ANTIDUMPING OR COUNTERVAILING DUTY) INVESTIGATION OF (PRODUCT) FROM (COUNTRY) (CASE NUMBER)} or

{THE (DATES OF PERIOD OF REVIEW) (ADMINISTRATIVE OR NEW SHIPPER) REVIEW UNDER THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER)} or {THE (SUNSET REVIEW OR CHANGED CIRCUMSTANCE REVIEW OR SCOPE RULING OR CIRCUMVENTION INQUIRY) OF THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER)}}. In my capacity as (INSERT ONE OF THE FOLLOWING OPTIONS IN { }; {COUNSEL} or {ADVISER, PREPARER, OR REVIEWER}) of this submission, I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signature: _____

Date: _____

***For multiple representative certifications, all representatives and their firms should be listed in the first sentence of the certification and all representatives should sign and date the certification. In addition, singular pronouns and possessive adjectives should be changed accordingly, e.g., "I" should be changed to "we" and "my knowledge" should be changed to "our knowledge."

[62 FR 27379, May 19, 1997, as amended at 73 FR 3643, Jan. 22, 2008; 76 FR 7499, Feb. 10, 2011; 76 FR 39275, July 6, 2011; 76 FR 54699, Sept. 2, 2011; 78 FR 42691, July 17, 2013; 79 FR 69047, Nov. 20, 2014; 80 FR 36473, June 25, 2015; 85 FR 17007, Mar. 26, 2020; 88 FR 67079, Sept. 29, 2023]

EFFECTIVE DATE NOTE: At 85 FR 17007, Mar. 26, 2020, §351.303 was amended by adding paragraph (f)(4), effective Mar. 24, 2020 through May 19, 2020. At 85 FR 29615, May 18, 2020, this amendment was extended to July 17, 2020. At 85 FR 41363, July 10, 2020, this amendment was extended indefinitely.

§ 351.304 Establishing business proprietary treatment of information.

(a) *Claim for business proprietary treatment.* (1) Any person that submits fac-

tual information to the Secretary in connection with a proceeding may:

(i) Request that the Secretary treat any part of the submission as business proprietary information that is subject to disclosure only under an administrative protective order,

(ii) Claim that there is a clear and compelling need to withhold certain business proprietary information from disclosure under an administrative protective order, or

(iii) In an investigation, identify customer names that are exempt from disclosure under administrative protective order under section 777(c)(1)(A) of the Act.

(2) The Secretary will require that all business proprietary information presented to, or obtained or generated by, the Secretary during a segment of a proceeding be disclosed to authorized applicants, except for

(i) Customer names submitted in an investigation,

(ii) Information for which the Secretary finds that there is a clear and compelling need to withhold from disclosure, and

(iii) Privileged or classified information.

(b) *Identification of business proprietary information—(1) Information releasable under administrative protective order—(i) In general.* A person submitting information must identify the information for which it claims business proprietary treatment by enclosing the information within single brackets. The submitting person must provide with the information an explanation of why each item of bracketed information is entitled to business proprietary treatment. A person submitting a request for business proprietary treatment also must include an agreement to permit disclosure under an administrative protective order, unless the submitting party claims that there is a clear and compelling need to withhold the information from disclosure under an administrative protective order.

(ii) *Electronic databases.* In accordance with §351.303(c)(3), an electronic database need not contain brackets. The submitter must select the security classification "Business Proprietary Document—May Be Released Under APO" at the time of filing to request

business proprietary treatment of the information contained in the database. The public version of the database must be publicly summarized and ranged in accordance with § 351.304(c).

(2) *Information claimed to be exempt from disclosure under administrative protective order.* (i) If the submitting person claims that there is a clear and compelling need to withhold certain information from disclosure under an administrative protective order (see paragraph (a)(1)(ii) of this section), the submitting person must identify the information by enclosing the information within double brackets, and must include a full explanation of the reasons for the claim.

(ii) In an investigation, the submitting person may enclose business proprietary customer names within double brackets (see paragraph (a)(1)(iii) of this section).

(iii) The submitting person may exclude the information in double brackets from the business proprietary/APO version of the submission served on authorized applicants. See § 351.303 for filing and service requirements.

(c) *Public version.* (1) A person filing a submission that contains information for which business proprietary treatment is claimed must also file a public version of the submission. The public version must be filed on the filing deadline for the business proprietary document. If the business proprietary document was filed under the one-day lag rule (see § 351.303(c)(2)), the public version and the final business proprietary document must be filed on the first business day after the filing deadline. The public version must contain a summary of the bracketed information in sufficient detail to permit a reasonable understanding of the substance of the information. If the submitting person claims that summarization is not possible, the claim must be accompanied by a full explanation of the reasons supporting that claim. Generally, numerical data will be considered adequately summarized if grouped or presented in terms of indices or figures within 10 percent of the actual figure. If an individual portion of the numerical data is voluminous, at least one percent representative of that portion must be summarized. A submitter

should not create a public summary of business proprietary information of another person.

(2) If a submitting party discovers that it has failed to bracket information correctly, the submitter may file a complete, corrected business proprietary document along with the public version (see § 351.303(c)(2)(ii) through (iii)). At the close of business on the day on which the public version of a submission is due under paragraph (c)(1) of this section, however, the bracketing of business proprietary information in the original business proprietary document or, if a corrected version is timely filed, the corrected business proprietary document will become final. Once bracketing has become final, the Secretary will not accept any further corrections to the bracketing of information in a submission, and the Secretary will treat non-bracketed information as public information.

(d) *Nonconforming submissions*—(1) *In general.* The Secretary will reject a submission that does not meet the requirements of section 777(b) of the Act and this section with a written explanation. The submitting person may take any of the following actions within two business days after receiving the Secretary's explanation:

(i) Correct the problems and resubmit the information;

(ii) If the Secretary denied a request for business proprietary treatment, agree to have the information in question treated as public information;

(iii) If the Secretary granted business proprietary treatment but denied a claim that there was a clear and compelling need to withhold information under an administrative protective order, agree to the disclosure of the information in question under an administrative protective order; or

(iv) Submit other material concerning the subject matter of the rejected information. If the submitting person does not take any of these actions, the Secretary will not consider the rejected submission.

(2) *Timing.* The Secretary normally will determine the status of information within 30 days after the day on which the information was submitted.

If the business proprietary status of information is in dispute, the Secretary will treat the relevant portion of the submission as business proprietary information until the Secretary decides the matter.

[63 FR 24401, May 4, 1998, as amended at 76 FR 39277, July 6, 2011; 88 FR 67079, Sept. 29, 2023]

§ 351.305 Access to business proprietary information.

(a) *The administrative protective order.* The Secretary will place an administrative protective order on the record as follows: within two business days after the day on which a petition is filed or an investigation is self-initiated; within five business days after the day on which a request for a new shipper review is properly filed in accordance with §§ 351.214 and 351.303, an application for a scope ruling is properly filed in accordance with §§ 351.225 and 351.303, or a request for a circumvention inquiry is properly filed in accordance with §§ 351.226 and 351.303; within five business days after the day on which a request for a changed circumstances review is properly filed in accordance with §§ 351.216 and 351.303 or a changed circumstances review is self-initiated; or within five business days after initiating any other segment of a proceeding. The administrative protective order will require the authorized applicant to:

(1) Establish and follow procedures to ensure that no employee of the authorized applicant's firm releases business proprietary information to any person other than the submitting party, an authorized applicant, or an appropriate Department official identified in section 777(b) of the Act;

(2) Notify the Secretary of any changes in the facts asserted by the authorized applicant in its administrative protective order application;

(3) Destroy business proprietary information by the time required under the terms of the administrative protective order;

(4) Immediately report to the Secretary any apparent violation of the administrative protective order; and

(5) Acknowledge that any unauthorized disclosure may subject the authorized applicant, the firm of which the

authorized applicant is a partner, associate, or employee, and any partner, associate, or employee of the authorized applicant's firm to sanctions listed in part 354 of this chapter (19 CFR part 354).

(b) *Application for access under administrative protective order.* (1) Generally, no more than two independent representatives of a party to the proceeding may have access to business proprietary information under an administrative protective order. A party must designate a lead firm if the party has more than one independent authorized applicant firm.

(2) A representative of a party to the proceeding may apply for access to business proprietary information under the administrative protective order by submitting an electronic application available in ACCESS at <https://access.trade.gov> (Form ITA-367) to the Secretary. The electronic application will be filed and served in ACCESS upon submission. Form ITA-367 must identify the applicant and the segment of the proceeding involved, state the basis for eligibility of the applicant for access to business proprietary information, and state the agreement of the applicant to be bound by the administrative protective order. Form ITA-367 must be accompanied by a certification that the application is consistent with Form ITA-367 and an acknowledgment that any discrepancies will be interpreted in a manner consistent with Form ITA-367. An applicant must apply to receive all business proprietary information on the record of the segment of a proceeding in question but may waive service of business proprietary information it does not wish to receive from other parties to the proceeding.

(3) To minimize the disruption caused by late applications, an application should be filed before the first response to the initial questionnaire has been submitted. Where justified, however, applications may be filed up to the date on which the case briefs are due.

(c) *Approval of access under administrative protective order; administrative protective order service list; service of earlier-filed business proprietary submissions.* (1) The Secretary will grant access to a qualified applicant by including the

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name of the applicant on an administrative protective order service list. Access normally will be granted within five days of receipt of the application unless there is a question regarding the eligibility of the applicant to receive access. In that case, the Secretary will decide whether to grant the applicant access within 30 days of receipt of the application. The Secretary will provide by the most expeditious means available the administrative protective order service list to parties to the proceeding on the day the service list is issued or amended.

(2) After the Secretary approves an application, the authorized applicant may request service of earlier-filed business proprietary submissions of the other parties that are no longer available in ACCESS.

(i) For an application that is approved before the first response to the initial questionnaire is submitted, the submitting party must serve the authorized applicant those submissions within two business days of the request. Service must be made in accordance with section 351.303(f)(1)(iii). A certificate of service is not required.

(ii) For an application that is approved after the first response to the initial questionnaire is submitted, the submitting party must serve the authorized applicant those submissions within five business days of the request. Service must be made in accordance with section 351.303(f)(1)(iii). A certificate of service is not required. Any authorized applicant who filed the application after the first response to the initial questionnaire is submitted will be liable for costs associated with the additional production and service of business proprietary information already on the record.

(d) *Additional filing requirements for importers.* If an applicant represents a party claiming to be an interested party by virtue of being an importer, then the applicant shall submit, along with the Form ITA-367, documentary evidence demonstrating that during the applicable period of investigation or period of review the interested party imported subject merchandise. For a scope segment of a proceeding pursuant to § 351.225 or a circumvention segment of a proceeding pursuant to § 351.226,

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the applicant must present documentary evidence that the interested party imported subject merchandise, or that it has taken steps towards importing the merchandise subject to the scope or circumvention inquiry. For a covered merchandise referral segment of a proceeding pursuant to § 351.227, an applicant representing an interested party that has been identified by U.S. Customs and Border Protection as the importer in a covered merchandise referral is exempt from the requirements of providing documentary evidence to demonstrate that it is an importer for purposes of that segment of a proceeding.

[63 FR 24402, May 4, 1998, as amended at 73 FR 3643, Jan. 22, 2008; 76 FR 39277, July 6, 2011; 86 FR 52384, Sept. 20, 2021; 88 FR 67080, Sept. 29, 2023]

§ 351.306 Use of business proprietary information.

(a) *By the Secretary.* The Secretary may disclose business proprietary information submitted to the Secretary only to:

- (1) An authorized applicant;
- (2) An employee of the Department of Commerce or the International Trade Commission directly involved in the proceeding in which the information is submitted;
- (3) An employee of U.S. Customs and Border Protection directly involved in conducting an investigation regarding negligence, gross negligence, or fraud relating to an antidumping or countervailing duty proceeding;
- (4) The U.S. Trade Representative as provided by 19 U.S.C. 3571(i);
- (5) Any person to whom the submitting person specifically authorizes disclosure in writing; and
- (6) A charged party or counsel for the charged party under 19 CFR part 354.

(b) *By an authorized applicant.* (1) An authorized applicant may retain business proprietary information for the time authorized by the terms of the administrative protective order (APO).

(2) An authorized applicant may use business proprietary information for purposes of the segment of the proceeding in which the information was submitted.

(3) If business proprietary information that was submitted to a segment

of the proceeding is relevant to an issue in a different segment of the same proceeding, an authorized applicant may place such information on the record of the subsequent segment as authorized by the APO of the segment where the business proprietary information was submitted.

(4) If business proprietary information that was submitted to a countervailing duty segment of the proceeding is relevant to a subsequent scope, circumvention, or covered merchandise inquiry conducted on the record of the companion antidumping duty segment of the proceeding pursuant to § 351.225(m)(2), § 351.226(m)(2), or § 351.227(m)(2), an authorized applicant may place such information on the record of the companion antidumping duty segment of the proceeding as authorized by the APO of the countervailing duty segment where the business proprietary information was submitted.

(5) If business proprietary information that was submitted to a scope, circumvention, or covered merchandise inquiry conducted on the record of a companion antidumping duty segment of the proceeding pursuant to § 351.225(m)(2), § 351.226(m)(2), or § 351.227(m)(2) is relevant to a subsequent countervailing duty segment of the proceeding, an authorized applicant may place such information on the record of the companion countervailing duty segment of the proceeding as authorized by the APO of the antidumping duty segment where the business proprietary information was submitted.

(c) *Identifying parties submitting business proprietary information.* (1) If a party submits a document containing business proprietary information of another person, the submitting party must identify, contiguously with each item of business proprietary information, the person that originally submitted the item (e.g., Petitioner, Respondent A, Respondent B). Business proprietary information not identified will be treated as information of the person making the submission. If the submission contains business proprietary information of only one person, it shall so state on the first page and identify the person that originally sub-

mitted the business proprietary information on the first page.

(2) If a party to a proceeding is not represented, or its representative is not an authorized applicant, the submitter of a document containing that party's business proprietary information must serve that party or its representative, if applicable, with a version of the document that contains only that party's business proprietary information consistent with § 351.303(f)(1)(iii). The document must not contain the business proprietary information of other parties.

(d) *Disclosure to parties not authorized to receive business proprietary information.* No person, including an authorized applicant, may disclose the business proprietary information of another person to any other person except another authorized applicant or a Department official described in paragraph (a)(2) of this section. Any person that is not an authorized applicant and that is served with business proprietary information must return it to the sender immediately, to the extent possible without reading it, and must notify the Department. An allegation of an unauthorized disclosure will subject the person that made the alleged unauthorized disclosure to an investigation and possible sanctions under 19 CFR part 354.

[63 FR 24403, May 4, 1998, as amended at 88 FR 67080, Sept. 29, 2023; 89 FR 20836, Mar. 25, 2024; 89 FR 101763, Dec. 16, 2024]

§ 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

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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 sub-

mitted 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 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.

(g) *Partial or total facts available.* In accordance with section 776(a) of the Act, if the Secretary determines to apply facts available, regardless of the

use of an adverse inference under section 776(b) of the Act, the Secretary may apply facts available to only a portion of its antidumping or countervailing duty analysis and calculations, referred to as partial facts available, or to all of its analysis and calculations, referred to as total facts available, as appropriate on a case-specific basis.

(h) *Segment-specific dumping and countervailable subsidy rates.* If the Secretary has determined dumping margins or countervailable subsidy rates in separate segments of the same proceeding in which the Secretary is applying facts available, in accordance with section 776(c)(2) of the Act the Secretary may apply those margins or rates as facts available without being required to conduct a corroboration analysis.

(i) *Selection of adverse facts available.* If the Secretary determines to apply adverse facts available, in accordance with sections 776(d)(1), (2), and (3) of the Act, the following applies:

(1) In an antidumping proceeding, the Secretary may use a dumping margin from any segment of the proceeding as adverse facts, including the highest dumping margin available. The Secretary may use the highest dumping margin available if the Secretary determines that such an application is warranted after evaluating the situation that resulted in an adverse inference;

(2) In a countervailing duty segment of the proceeding, in accordance with the hierarchy set forth in paragraph (j) of this section, the Secretary may use a countervailing subsidy rate applied to the same or similar program in a countervailing duty proceeding involving the same country or, if there is no same or similar program, use a countervailing subsidy rate from a proceeding that the Secretary determines is reasonable to use. The Secretary will normally apply the highest calculated above-*de minimis* countervailing duty rate available if the Secretary determines that such an application is warranted after evaluating the situation that resulted in an adverse inference; and

(3) In applying adverse facts available, the Secretary will not be required to:

(i) Estimate what a countervailable subsidy or dumping margin would have been if an interested party that was found to have failed to cooperate under section 776(b)(1) of the Act had cooperated; or

(ii) Demonstrate that the countervailable subsidy rate or dumping margin used by the Secretary as adverse facts available reflects an alleged “commercial reality” of the interested party.

(j) *Adverse facts available hierarchy in countervailing duty proceedings.* In accordance with sections 776(d)(1)(A) and 776(d)(2) of the Act, when the Secretary applies an adverse inference in selecting a countervailable subsidy rate on the basis of facts otherwise available in a countervailing duty proceeding, the Secretary will normally select the highest program rate available using a hierarchical analysis as follows:

(1) For investigations, conducted pursuant to section 701 of the Act, the hierarchy will be applied in the following sequence:

(i) If there are cooperating respondents in the investigation, the Secretary will determine if a cooperating respondent used an identical program in the investigation and apply the highest calculated above-*de minimis* rate for the identical program;

(ii) If no rate exists which the Secretary is able to apply under paragraph (j)(1)(i), the Secretary will determine if an identical program was used in another countervailing duty proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the identical program;

(iii) If no rate exists which the Secretary is able to apply under paragraph (j)(1)(ii), the Secretary will determine if there is a similar or comparable program in any countervailing duty proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar or comparable program; and

(iv) If no rate exists which the Secretary is able to apply under paragraph (j)(1)(iii), the Secretary will apply the highest calculated above-*de minimis* rate from any non-company-specific program in a countervailing duty proceeding involving the same country

that the Secretary considers the company’s industry could possibly use.

(2) For administrative reviews, conducted pursuant to section 751 of the Act, the hierarchy will be applied in the following sequence:

(i) The Secretary will determine if an identical program has been used in any segment of the proceeding and apply the highest calculated above-*de minimis* rate for any respondent for the identical program;

(ii) If no rate exists which the Secretary is able to apply under paragraph (j)(2)(i), the Secretary will determine if there is a similar or comparable program within any segment of the same proceeding and apply the highest calculated above-*de minimis* rate for the similar or comparable program;

(iii) If no rate exists which the Secretary is able to apply under paragraph (j)(2)(ii), the Secretary will determine if there is an identical program in any countervailing duty proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the identical program or, if there is no identical program or above-*de minimis* rate available, determine if there is a similar or comparable program in any countervailing duty proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar or comparable program; and

(iv) If no rate exists which the Secretary is able to apply under paragraph (j)(2)(iii), the Secretary will apply the highest calculated rate for any non-company-specific program from any countervailing duty proceeding involving the same country that the Secretary considers the company’s industry could possibly use.

(3) When the Secretary uses an adverse facts available countervailing duty hierarchy, the following will apply:

(i) The Secretary will treat rates less than 0.5 percent as *de minimis*;

(ii) The Secretary will normally determine a program to be a similar or comparable program based on the Secretary’s treatment of the program’s benefit;

(iii) The Secretary will normally select the highest program rate available

in accordance with the hierarchical sequence, unless the Secretary determines that such a rate is otherwise inappropriate; and

(iv) When applicable, the Secretary will determine an adverse facts available rate selected using the hierarchy to be corroborated in accordance with section 776(c)(1) of the Act.

[62 FR 27379, May 19, 1997, as amended at 63 FR 13524, Mar. 20, 1998; 89 FR 20836, Mar. 25, 2024; 89 FR 101763, Dec. 16, 2024]

§ 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

(iii) For the final results of an expedited sunset review, expedited anti-

dumping 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 requested to provide the following:

(i) A table of contents listing each issue;

(ii) A table of authorities, including statutes, regulations, administrative cases, dispute panel decisions and court holdings cited; and

(iii) A public executive summary for each argument raised in the brief. Executive summaries should be no more than 450 words in length, not counting supporting citations.

(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, should identify the arguments raised in case briefs, and should identify the arguments to which it is responding. As part of the rebuttal brief, parties are requested to provide the following:

(i) A table of contents listing each issue;

(ii) A table of authorities, including statutes, regulations, administrative cases, dispute panel decisions and court holdings cited; and

(iii) A public executive summary for each argument raised in the rebuttal brief. Executive summaries should be no more than 450 words in length, not counting supporting citations.

(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

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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; 89 FR 101764, Dec. 16, 2024]

§ 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.

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(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, sub-

sidization, 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 anti-dumping 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 paragraphs (d)(3)(ii), and (d)(3)(vi), and (d)(4) of § 351.218, paragraphs (b), (c)(1), and (c)(3) of § 351.301, and paragraphs (c), (d), and (e) of § 351.309 concerning dumping or a countervailing 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.

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

§ 351.313 Attorneys or representatives.

In general. No register of attorneys or representatives who may practice before the Department is maintained. No application for admission to practice is required. Any person desiring to appear as attorney or representative before the Department may be required to show to the satisfaction of the Secretary his acceptability in that capacity. Any attorney or representative practicing before the Department, or desiring so to practice, may for good cause shown be suspended or barred from practicing before the Department, or have imposed on him such lesser sanctions (e.g., public or private reprimand) as the Secretary deems appropriate, but only after he has been accorded an opportunity to present his views in the matter. The Department will maintain a public register of attorneys and representatives suspended or barred from practice. “Attorney” pursuant to this subpart and “legal counsel” in § 351.303(g) have the same meaning. “Representative” pursuant to this

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subpart and in §351.303(g) has the same meaning.

[78 FR 22777, Apr. 17, 2013]

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) The interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment; and

(2) The Secretary will not double-count adjustments.

(c) *Use of price net of price adjustments.* In calculating export price, constructed export price, and normal value (where normal value is based on price), the Secretary normally will use a price that is net of price adjustments, as defined in §351.102(b), that are reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable). The Secretary will not accept a price adjustment that is made after the time of sale unless the interested party demonstrates, to the satisfaction of the Secretary, its entitlement to such an adjustment.

(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—(1) Original place of shipment.* In

making adjustments for movement expenses to establish export price or constructed export price under section 772(c)(2)(A) of the Act, or normal value under section 773(a)(6)(B)(ii) of the Act, the Secretary normally will consider the production facility as being the “original place of shipment. However, where the Secretary bases export price, constructed export price, or normal value on a sale by an unaffiliated reseller, the Secretary may treat the original place from which the reseller shipped the merchandise as the “original place of shipment.”

(2) *Warehousing.* The Secretary will consider warehousing expenses that are incurred after the subject merchandise or foreign like product leaves the original place of shipment as movement expenses.

(f) *Treatment of affiliated parties in antidumping proceedings—(1) In general.* In an antidumping proceeding under this part, the Secretary will normally treat two or more affiliated parties as a single entity if the Secretary concludes that there is a significant potential for manipulation of prices, production, or other export decisions.

(2) *Significant potential for manipulation.* In identifying a significant potential for the manipulation of price, production or other export decisions, the factors the Secretary may consider for all affiliated parties include:

(i) The level of common ownership;

(ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and

(iii) Whether operations are intertwined, such as through the sharing of sales and export information; involvement in production, pricing, and other commercial decisions; the sharing of facilities or employees; or significant transactions between the affiliated parties.

(3) *Additional considerations for affiliated parties with access to production facilities in determining the significant potential for manipulation.* In determining whether there is a significant potential for manipulation, if the Secretary determines that affiliated parties have, or will have, access to production facilities for similar or identical products, the Secretary shall consider if

any of those facilities would require substantial retooling in order to restructure manufacturing priorities.

(4) *Exceptions.* If the following affiliated parties do not produce similar or identical products to the subject merchandise or export subject merchandise to the United States, the Secretary will normally not treat those parties as part of a single entity for purposes of the Secretary's calculations under this provision:

- (i) Input suppliers;
- (ii) Sellers of the foreign like product in the home market; and
- (iii) Affiliated entities for which the Secretary determines that treating those parties as a single entity would be otherwise inappropriate based on record information.

(g) *Allocation of expenses and price adjustments—(1) In general.* The Secretary may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided the Secretary is satisfied that the allocation method used does not cause inaccuracies or distortions.

(2) *Reporting allocated expenses and price adjustments.* Any party seeking to report an expense or a price adjustment on an allocated basis must demonstrate to the Secretary's satisfaction that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology used does not cause inaccuracies or distortions.

(3) *Feasibility.* In determining the feasibility of transaction-specific reporting or whether an allocation is calculated on as specific a basis as is feasible, the Secretary will take into account the records maintained by the party in question in the ordinary course of its business, as well as such factors as the normal accounting practices in the country and industry in question and the number of sales made by the party during the period of investigation or review.

(4) *Expenses and price adjustments relating to merchandise not subject to the proceeding.* The Secretary will not reject an allocation method solely because the method includes expenses incurred, or price adjustments made, with respect to sales of merchandise that does not constitute subject mer-

chandise or a foreign like product (whichever is applicable).

(h) [Reserved]

(i) *Date of sale.* In identifying the date of 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. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

[62 FR 27379, May 19, 1997, as amended at 73 FR 16518, Mar. 28, 2008; 81 FR 15645, Mar. 24, 2016; 89 FR 101764, Dec. 16, 2024]

§ 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.* In establishing constructed export price under section 772(d) of the Act, the Secretary will make adjustments for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid. The Secretary will not make an adjustment for any expense that is related solely to the sale to an affiliated importer in the United States, although the Secretary may make an adjustment to normal value for such expenses under section 773(a)(6)(C)(iii) of the Act.

(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 65 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 (sales at less than cost of production).)

(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 anti-dumping determination.

(iii) Ordinarily, under paragraph (f)(1)(i) of this section, the Secretary will deduct the amount reimbursed only once in the calculation of the export price (or constructed export price).

(2) *Reimbursement certification.* (i) The importer must certify with U.S. Customs and Border Protection prior to liquidation (except as provided for in paragraph (f)(2)(iii) of this section) whether the importer has or has not been reimbursed or entered into any agreement or understanding for the payment or for the refunding to the importer by the manufacturer, producer, seller, or exporter for all or any part of the antidumping and countervailing duties, as appropriate. Such certifications should identify the commodity and country and contain the information necessary to link the certification to the relevant entry or entry line number(s).

(ii) The reimbursement certification may be filed either electronically or in paper in accordance with the U.S. Customs and Border Protection's requirements, as applicable.

(iii) If an importer does not provide its reimbursement certification prior to liquidation, U.S. Customs and Border Protection may accept the reimbursement certification in accordance with its protest procedures under 19 U.S.C. 1514, unless otherwise directed.

(iv) Reimbursement certifications are required for entries of the relevant commodity that have been imported on or after the date of publication of the antidumping notice in the FEDERAL REGISTER that first suspended liquidation in that proceeding.

(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.

[62 FR 27379, May 19, 1997, as amended at 86 FR 52384, Sept. 20, 2021; 89 FR 20837, Mar. 25, 2024]

§ 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)(5) of the Act (indirect sales or offers for sale).)

(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. However, the Secretary normally will not calculate normal value based on the sale by an affiliated party if sales of the foreign like product by an exporter or producer to affiliated parties account for less than five percent of the total value (or quantity) of the exporter's or producer's sales of the foreign like product in the market in question or if sales to the affiliated party are comparable, as defined in paragraph (c) of this section.

§ 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 (price used for determining normal value)); 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 (use of third country prices in determining normal value)).

(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(c)(2)(i).

(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 (use of constructed value)).

(g) *Special rule for certain multinational corporations.* In the course of an antidumping investigation, if the Secretary determines that the factors listed in section 773(d) of the Act are present, the Secretary will apply the special rule for certain multinational corporations and determine the normal value of the subject merchandise by reference to the normal value at which the foreign like product is sold in substantial quantities from one or more facilities outside the exporting country. In making a determination under this provision, the following will apply:

(1) Interested parties alleging that the Secretary should apply the special rule for certain multinational corporations must submit the allegation in accordance with the filing requirements set forth in § 351.301(c)(2)(i).

(2) If the Secretary determines that the non-exporting country at issue is a nonmarket economy country and, in accordance with § 351.408, normal value would be determined using a factors of production methodology if the special

rule for certain multinational corporations was applied, the Secretary will not apply the special rule for certain multinational corporations.

[62 FR 27379, May 19, 1997, as amended at 88 FR 67080, Sept. 29, 2023; 89 FR 101764, Dec. 16, 2024]

§ 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 manufacturing, selling, general and administrative expenses and profit. The Secretary may use constructed value as the basis for normal value when: 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 for which the prices 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 (f) of the Act.) This section clarifies the meaning of certain terms and sets forth certain information which the Secretary will normally consider in determining a 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.

(3) Under section 773(e)(2)(B)(iii) of the Act, the Secretary will normally consider the following criteria in selecting sources for selling, general and administrative expenses, as well as profit, in calculating constructed value:

(i) The similarity of the potential surrogate companies’ business operations and products to the examined producer’s or exporter’s business operations and products;

(ii) The extent to which the financial data of the surrogate company reflects sales in the home market and does not reflect sales to the United States;

(iii) The contemporaneity of the surrogate company’s data to the period of investigation or review; and

(iv) The extent of similarity between the customer base of the surrogate company and the customer base of the examined producer or exporter.

[62 FR 27379, May 19, 1997, as amended at 241206–89 FR 101764, Dec. 16, 2024]

§ 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, such sales will be disregarded only if they are made within an extended period of time, in substantial quantities, and are not at prices which permit recovery of costs within a reasonable 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) *Determination of value under the major input rule.* For purposes of section 773(f)(3) of the Act, the Secretary normally will determine the value of a major input purchased from an affiliated person based on the higher of:

(1) The price paid by the exporter or producer to the affiliated person for the major input;

(2) The amount usually reflected in sales of the major input in the market under consideration; or

(3) The cost to the affiliated person of producing the major input.

(c) *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.

(d) *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 factory overhead. The Secretary will not consider sales expenses, such as advertising costs, or other general and administrative or non-production costs (such as general research and development 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 non-market economies will be applied.

(b) *Selecting surrogate countries—(1) Determining comparable economies.* The Secretary is directed by sections

773(c)(2)(B) and 773(c)(4)(A) of the Act to select surrogate countries which are at a level of economic development comparable to that of the nonmarket economy country at issue.

(i) *Measuring economic comparability.* In determining whether market economy countries are at a level of economic development comparable to the nonmarket economy at issue, the Secretary will place primary emphasis on *per capita* gross domestic product (GDP).

(ii) *Additional considerations in determining economic comparability.* When the Secretary determines that such an analysis is warranted, the Secretary may consider additional factors in determining whether certain market economy countries are at a level of economic development comparable to the nonmarket economy at issue. If the Secretary considers additional factors in its analysis, the Secretary will identify those factors and provide the reason it considered those factors along with the list of comparable market economies issued under paragraph (b)(1)(iii) of this section.

(iii) *Annual listing of comparable economies.* On an annual basis, the Secretary will determine market economies comparable to individual nonmarket economies and list those market economies on the Secretary's website.

(2) *Determining significant producers of comparable merchandise.* In selecting a surrogate country from those countries which the Secretary determines are economically comparable, the Secretary will consider, in accordance with section 773(c)(2)(A) and (c)(4)(B) of the Act, those countries that are significant producers of merchandise comparable to the subject merchandise.

(3) *Selecting between surrogate countries which are economically comparable and significant producers of comparable merchandise.* If more than one economically comparable country produces comparable merchandise, the Secretary will consider the totality of the information on the record in selecting a surrogate country. Among the criteria the Secretary may consider in selecting a surrogate country are the availability, accessibility, and quality of data from those countries and the

similarity of products manufactured in the potential surrogate countries in comparison to the subject merchandise.

(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 produced in one or more market economy countries, purchased from one or more market economy suppliers and paid for in market economy currency, the Secretary normally will use the price(s) paid to the market economy supplier(s) if substantially all of the total volume of the factor is purchased from the market economy supplier(s). For purposes of this provision, the Secretary defines the term "substantially all" to be 85 percent or more of the total volume purchased of the factor used in the production of subject merchandise. In those instances where less than substantially all of the total volume of the factor is produced in one or more market economy countries and purchased from one or more market economy suppliers, the Secretary normally will weight-average the actual price(s) paid for the market economy portion and the surrogate value for the nonmarket economy portion by their respective quantities.

(2) *Valuation in a single country.* The Secretary normally will value all factors in a single surrogate country.

(3) *Manufacturing overhead, general expenses, and profit.* For manufacturing overhead, general expenses, and profit, the Secretary normally will use nonproprietary information gathered from producers of identical or comparable merchandise in the surrogate country.

(d) *A determination that certain surrogate value information is not otherwise appropriate—(1) In general.* Notwithstanding the factors considered under

paragraph (c) of this section, the Secretary may disregard a proposed market economy country value for consideration as a surrogate value if the Secretary determines that evidence on the record reflects that the use of such a value would be inappropriate.

(i) In accordance with section 773(c)(5), the Secretary may disregard a proposed surrogate value if the Secretary determines that the value is derived from a country that provides broadly available export subsidies, if particular instances of subsidization occurred with respect to that proposed surrogate value, or if that proposed surrogate value was subject to an anti-dumping order.

(ii) In addition, the Secretary may disregard a proposed surrogate value if the Secretary determines based on record evidence that the value is derived from a facility, party, industry, intra-country region or a country with weak, ineffective, or nonexistent property (including intellectual property), human rights, labor, or environmental protections.

(2) *Requirements to disregard a proposed surrogate value based on weak, ineffective, or nonexistent protections.* For purposes of paragraph (d)(1)(ii) of this section, the Secretary will only consider disregarding a proposed market economy country value as a surrogate value of production if the Secretary determines the following:

(i) The proposed surrogate value at issue is for a significant input or labor;

(ii) The proposed surrogate value is derived from one country or an average of values from a limited number of countries; and

(iii) The information on the record supports a claim that the identified weak, ineffective, or nonexistent property (including intellectual property), human rights, labor, or environmental protections undermine the appropriateness of using that value as a surrogate value.

(3) *The use of a surrogate value located in a country which is not at a level of economic development comparable to that of the nonmarket economy.* If the Secretary determines, pursuant to this section, after reviewing all proposed values on the record derived from market economy countries which are at a level of

economic development comparable to the nonmarket economy, that no such proposed value is appropriate to value a specific factor of production, the Secretary may use a value on the record derived from a market economy country which is not at a level of economic development comparable to that of the nonmarket economy country as a surrogate to value that specific factor of production.

(4) *The use of a surrogate value not located in a country which is a significant producer of comparable merchandise.* If the Secretary determines, pursuant to this section, after reviewing all proposed surrogate values on the record derived from market economy countries which are significant producers of merchandise comparable to the subject merchandise, that no such proposed value is appropriate to value a specific factor of production, the Secretary may use a value on the record derived from a market economy country which is not a significant producer of merchandise comparable to the subject merchandise as a surrogate to value that specific factor of production.

[62 FR 27379, May 19, 1997, as amended at 78 FR 46804, Aug. 2, 2013; 88 FR 67080, Sept. 29, 2023; 89 FR 20837, Mar. 25, 2024; 89 FR 101765, Dec. 16, 2024]

§ 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 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.)

(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 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) *In general.* With the exception of the allowance described in paragraph (e) of this section concerning commissions paid in only one market, the Secretary will make circumstances of sale adjustments under section 773(a)(6)(C)(iii) of the Act only for direct selling expenses and assumed expenses.

(c) *Direct selling expenses.* "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.

(d) *Assumed expenses.* Assumed expenses are selling expenses that are assumed by the seller on behalf of the buyer, such as advertising expenses.

(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.

(f) *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.

§ 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

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compared merchandise has identical physical characteristics.

§ 351.412 Levels of trade; adjustment for difference 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) *Adjustment for difference in level of trade.* The Secretary will adjust normal value for a difference in level of trade if:

(1) The Secretary calculates normal value at a different level of trade from the level of trade of the export price or the constructed export price (whichever is applicable); and

(2) The Secretary determines that the difference in level of trade has an effect on price comparability.

(c) *Identifying levels of trade and differences in levels of trade—(1) Basis for identifying levels of trade.* The Secretary will identify the level of trade based on:

(i) In the case of export price, the starting price;

(ii) In the case of constructed export price, the starting price, as adjusted under section 772(d) of the Act; and

(iii) In the case of normal value, the starting price or constructed value.

(2) *Differences in levels of trade.* The Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing.

(d) *Effect on price comparability—(1) In general.* 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 there is a pattern of consistent price differences between

sales in the market in which normal value is determined:

(i) At the level of trade of the export price or constructed export price (whichever is appropriate); and

(ii) At the level of trade at which normal value is determined.

(2) *Relevant sales.* Where possible, the Secretary will make the determination under paragraph (d)(1) of this section on the basis of sales of the foreign like product by the producer or exporter. Where this is not possible, the Secretary may use sales of different or broader product lines, sales by other companies, or any other reasonable basis.

(e) *Amount of adjustment.* The Secretary normally will calculate the amount of a level of trade adjustment by:

(1) Calculating the weighted-averages of the prices of sales at the two levels of trade identified in paragraph (d), after making any other adjustments to those prices appropriate under section 773(a)(6) of the Act and this subpart;

(2) Calculating the average of the percentage differences between those weighted-average prices; and

(3) Applying the percentage difference to normal value, where it is at a different level of trade from the export price or constructed export price (whichever is applicable), after making any other adjustments to normal value appropriate under section 773(a)(6) of the Act and this subpart.

(f) *Constructed export price offset—(1) In general.* The Secretary will grant a constructed export price offset only where:

(i) Normal value is compared to constructed export price;

(ii) Normal value is determined at a more advanced level of trade than the level of trade of the constructed export price; and

(iii) Despite the fact that a person has cooperated to the best of its ability, the data available do not provide an appropriate basis to determine under paragraph (d) of this section whether the difference in level of trade affects price comparability.

(2) *Amount of the offset.* The amount of the constructed export price offset will be the amount of indirect selling expenses included in normal value, up

to the amount of indirect selling expenses deducted in determining constructed export price. In making the constructed export price offset, "indirect selling expenses" means selling 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.

(3) *Where data permit determination of affect on price comparability.* Where available data permit the Secretary to determine under paragraph (d) of this section whether the difference in level of trade affects price comparability, the Secretary will not grant a constructed export price offset. In such cases, if the Secretary determines that price comparability has been affected, the Secretary will make a level of trade adjustment. If the Secretary determines that price comparability has not been affected, the Secretary will not grant either a level of trade adjustment or a constructed export price offset.

§ 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.* 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) *Choice of method.* (1) In an investigation or review, the Secretary will use the average-to-average method unless the Secretary determines another method is appropriate in a particular case.

(2) 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.

(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 in an investigation, the Secretary normally will calculate weighted averages for the entire period of investigation. However, when normal values, export prices, or constructed export prices differ significantly over the course of the period of investigation, the Secretary may calculate weighted averages for such shorter period as the Secretary deems appropriate. When applying the average-to-average method in a review, the Secretary normally will calculate weighted averages on a monthly basis and compare the weighted-average monthly export price or constructed export price to the weighted-average normal value for the contemporaneous month.

(e) *Application of the average-to-transaction method*—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.

(f) *Contemporaneous Month.* Normally, the Secretary will select as the contemporaneous month the first of the following months which applies:

(1) The month during which the particular U.S. sales under consideration were made;

(2) 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. sales in which there was a sale of the foreign like product.

(3) 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. sales in which there was a sale of the foreign like product.

[77 FR 8114, Feb. 14, 2012]

§ 351.415 Conversion of currency.

(a) *In general.* In an antidumping proceeding, the Secretary will convert foreign currencies into United States dol-

lars 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.

§ 351.416 Determination of a particular market situation.

(a) *Particular market situation defined.* A particular market situation is a circumstance or set of circumstances that does the following as determined by the Secretary:

(1) Prevents or does not permit a proper comparison of sales prices in the home market or third country market with export prices and constructed export prices; or

(2) Contributes to the distortion of the cost of materials and fabrication or other processing of any kind, such that the cost of production of merchandise subject to an investigation, suspension agreement, or antidumping order does not accurately reflect the cost of production in the ordinary course of trade.

(b) *Submission requirements when alleging the existence of a particular market situation.* When an interested party submits a timely allegation as to the existence of a particular market situation in an antidumping duty proceeding, relevant information reasonably available to that interested party supporting the claim must accompany the allegation. If the particular market situation being alleged is similar to an allegation of a particular market situation made in a previous or ongoing segment of the same or another proceeding, the interested party must identify the facts and arguments in the submission which are distinguishable

from those provided in the other segment or proceeding.

(c) *A determination that a particular market situation prevented or did not permit a proper comparison of prices existed during the period of investigation or review.* The Secretary may determine that a particular market situation, identified in paragraph (a)(1) of this section, existed during the period of investigation or review if a circumstance or set of circumstances prevented or did not permit a proper comparison between sales prices in the home market or third country market of the foreign like product and export prices or constructed export prices of subject merchandise for purposes of an anti-dumping analysis.

(1) *Examples of particular market situations in the home market that may prevent or do not permit a proper comparison with U.S. price.* Examples of a circumstance or set of circumstances in the home market that may prevent or not permit a proper comparison of prices, and are therefore particular market situations, include, but are not limited to, the following:

- (i) The imposition of an export tax on subject merchandise;
- (ii) Limitations on exports of subject merchandise from the subject country;
- (iii) The issuance and enforcement of anticompetitive regulations that confer a unique status on favored producers or that create barriers to new entrants to an industry; and
- (iv) Direct government control over pricing of subject merchandise to such an extent that home market prices for subject merchandise cannot be considered competitively set.

(2) *Examples of particular market situations in a third country market that may prevent or not permit a proper comparison of prices.* In situations where third country prices may be needed to calculate normal value in a dumping calculation, the Secretary may determine that third country prices cannot be properly compared to export prices or constructed export prices for reasons similar to those listed in paragraph (c)(1) of this section.

(3) *The use of constructed value may be warranted if a proper comparison of prices is prevented or not permitted.* If the Secretary determines that a particular

market situation prevented or did not permit a proper comparison of sales prices in the home market or third country market with export prices or constructed export prices during the period of investigation or review, the Secretary may conclude that it is necessary to determine normal value by constructing a value in accordance with section 773(e) of the Act and § 351.405.

(d) *A determination that a market situation existed during the period of investigation or review such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade—(1) In general.* For purposes of this paragraph (d)(1), the Secretary will determine that a market situation, identified in paragraph (a)(2) of this section, existed during the period of investigation or review if the Secretary determines the following, based on information on the record:

- (i) A circumstance or set of circumstances existed that may have impacted the costs of producing subject merchandise, or costs or prices of inputs into the production of subject merchandise;
- (ii) The cost of materials and fabrication or other processing of any kind, including the prices of inputs used to produce subject merchandise, were not in accordance with market principles or distorted, and therefore did not accurately reflect the cost of production of subject merchandise in the ordinary course of trade; and
- (iii) The circumstance or set of circumstances at issue contributed to the distortion of the cost of production of subject merchandise.

(2) *The Secretary will determine if it is more likely than not that a circumstance or set of circumstances contributed to distorted costs or prices.* In accordance with paragraph (d)(1)(iii), the Secretary will weigh the information on the record and determine whether it is more likely than not that the circumstance or set of circumstances contributed to the distortion in the cost of production of subject merchandise during the period of investigation or review, and therefore, that a market situation existed during that period.

(3) *Information the Secretary may consider in determining the existence of a market situation.* In determining whether a market situation existed in the subject country such that the cost of materials and fabrication or other processing did not accurately reflect the cost of production of subject merchandise in the ordinary course of trade during the period of investigation or review, the Secretary will consider all relevant information placed on the record by interested parties, including, but not limited to, the following:

(i) Comparisons of prices paid for significant inputs used to produce subject merchandise under the alleged market situation to prices paid for the same input under market-based circumstances, either in the home country or elsewhere;

(ii) Detailed reports and other documentation issued by foreign governments or independent international, analytical, or academic organizations indicating that lower prices for a significant input in the subject country would likely result from governmental or nongovernmental actions or inactions taken in the subject country or other countries;

(iii) Detailed reports and other documentation issued by foreign governments or independent international, analytical, or academic organizations indicating that prices for a significant input have deviated from a fair market value within the subject country, as a result, in part or in whole, of governmental or nongovernmental actions or inactions;

(iv) Agency determinations or results in which the Secretary determined record information did or did not support the existence of the alleged particular market situation with regard to the same or similar merchandise in the subject country in previous proceedings or segments of the same proceeding; and

(v) Information that property (including intellectual property), human rights, labor, or environmental protections in the subject country are weak, ineffective, or nonexistent, those protections exist and are effectively enforced in other countries, and that the ineffective enforcement or lack of protections may contribute to distortions

in the cost of production of subject merchandise or prices or costs of a significant input into the production of subject merchandise in the subject country. For purposes of this paragraph (d)(3)(v), the Secretary will normally look to cost effects on same or similar merchandise produced in economically comparable countries in analyzing the impact of such protections on the cost of production.

(4) *No restrictions based on lack of precise quantifiable data, hypothetical prices or actions of governments and industries in other market economies.* In determining whether a market situation exists in the subject country such that the cost of materials and fabrication or other processing do not accurately reflect the cost of production in the ordinary course of trade, the following will not preclude the finding of a market situation:

(i) The lack of precision in the quantifiable data relating to the distortion of prices or costs in the subject country;

(ii) The speculated cost of production of the subject merchandise, or the speculated prices or costs of a significant input into the production of the subject merchandise, unsupported by objective data, that a party claims would hypothetically exist in the subject country absent the alleged particular market situation or its contributing circumstances;

(iii) The actions taken or not taken by governments, government-controlled entities, or other public entities in other market economy countries in comparison with the actions taken or not taken by the government, state enterprise, or other public entity of the subject country, with the exception of information associated with the allegations addressed in paragraph (d)(3)(v) of this section; and

(iv) The existence of the same or similar government or nongovernment actions in the subject country that preceded the period of investigation or review.

(e) *Factors to consider in determining if a market situation is particular—*(1) *In general.* If the Secretary determines that a market situation exists under paragraph (c) or (d), the Secretary

must also determine if the market situation is particular. A market situation is particular if it impacts prices or costs for only certain parties or products in the subject country. In reaching this determination, the following applies:

(i) A particular market situation may exist even if a large number of certain parties or products are impacted by the circumstance or set of circumstances. The Secretary's analysis does not concern the specific number of products or parties, but whether the market situation impacts only certain parties or products, or the general population of parties or products, in the subject country;

(ii) The same or similar market situations can exist in multiple countries or markets and still be considered particular for purposes of this paragraph (e)(1) if the Secretary determines that a market situation exists which distorts sales prices or cost of production for certain parties or products specifically in the subject country; and

(iii) There are varied circumstances in which a market situation in a subject country can be determined to be particular, and a market situation may apply only to certain producers, importers, exporters, purchasers, users, industries, or enterprises, individually or in any combination.

(2) *Information the Secretary may consider in determining if a market situation is particular.* In determining if a market situation in the subject country is particular in accordance with paragraph (e)(1) of this section, the Secretary will consider all relevant information placed on the record by interested parties, including, but not limited to, the following:

(i) The size and nature of the market situation;

(ii) The volume of merchandise potentially impacted by the price or cost distortions resulting from the market situation; and

(iii) The number and nature of the entities potentially affected by the price or cost distortions resulting from a market situation.

(f) *The Secretary may adjust its calculations to address distortions to which a particular market situation under paragraphs (d) and (e) of this section has con-*

tributed—(1) In general. If the Secretary determines a particular market situation exists in the subject country which has contributed to a distortion in the cost of materials and fabrication or other processing, such that those costs do not accurately reflect the cost of production of subject merchandise in the ordinary course of trade, in accordance with sections 771(15) and 773(e) of the Act, the Secretary may address such distortions to the cost of production in its calculations.

(2) *Imprecise quantification of the distortions.* If, after consideration of the information on the record, the Secretary is unable to precisely quantify the distortions to the cost of production of subject merchandise in the ordinary course of trade to which the particular market situation has contributed, the Secretary may use any reasonable methodology based on record information to adjust its calculations to address those distortions.

(3) *The Secretary may determine not to adjust its calculations.* If the Secretary determines that a particular market situation exists in the subject country which has contributed to the distortions to the cost of production, but that an adjustment to its calculations of the cost of production of subject merchandise is not appropriate based on record information, the Secretary may determine not to adjust its calculations. In determining whether an adjustment is appropriate, the Secretary may consider the following:

(i) Whether the cost distortion is already sufficiently addressed in its calculations in accordance with another statutory provision, such as the transaction disregarded and major input rules of sections 773(f)(2) and (3) of the Act;

(ii) Whether a reasonable method for quantifying an adjustment to the calculations is absent from the record; and

(iii) Whether information on the record suggests that the application of an adjustment to the Secretary's calculations would otherwise be unreasonable.

(g) *Examples of particular market situations which contribute to distortions in the cost of materials and fabrication or other processing of any kind, such that*

those costs do not accurately reflect the cost of production in the ordinary course of trade. Examples of particular market situations which may contribute to the distortion of the cost of production of subject merchandise in the subject country, alone or in conjunction with others, include, but are not limited to, the following:

(1) A significant input into the production of subject merchandise is produced in such amounts that there is considerably more supply than demand in international markets for the input and the Secretary concludes, based on record information, that regardless of the impact of such overcapacity of the significant input on other countries, such overcapacity contributed to distortions of the price or cost of that input in the subject country during the period of investigation or review;

(2) A government, government-controlled entity, or other public entity in the subject country owns or controls the predominant producer or supplier of a significant input used in the production of subject merchandise and the Secretary concludes, based on record information, that such ownership or control of the producer or supplier contributed to price or cost distortions of that input in the subject country during the period of investigation or review;

(3) A government, government-controlled entity, or other public entity in the subject country intervenes in the market for a significant input into the production of subject merchandise and the Secretary concludes, based on record information, such that the intervention contributed to price or cost distortions of that input in the subject country during the period of investigation or review;

(4) A government in the subject country limits exports of a significant input into the production of subject merchandise and the Secretary concludes, based on record information, that such export limitations contributed to price or cost distortions of that input in the subject country during the period of investigation or review;

(5) A government in the subject country imposes export taxes on a significant input into the production of subject merchandise and the Secretary

concludes, based on record information, that such taxes contributed to price or cost distortions of that input in the subject country during the period of investigation or review;

(6) A government in the subject country exempts an importer, producer, or exporter of subject merchandise from paying duties or taxes associated with trade remedies established by the government relating to a significant input into the production of subject merchandise during the period of investigation or review;

(7) A government in the subject country rebates duties or taxes paid by an importer, producer or exporter of subject merchandise associated with trade remedies established by the government related to a significant input into the production of subject merchandise during the period of investigation or review;

(8) A government, government-controlled entity, or other public entity in the subject country provides financial assistance or other support to the producer or exporter of subject merchandise, or to a producer or supplier of a significant input into the production of subject merchandise and the Secretary concludes, based on record information, that such assistance or support contributed to cost distortions of subject merchandise or distortions in the price or cost of a significant input into the production of subject merchandise in the subject country during the period of investigation or review;

(9) A government, government-controlled entity, or other public entity in the subject country mandates, through law or in practice, the use of a certain percentage of domestic-manufactured inputs, the sharing or use of certain intellectual property or production processes, or the formation of certain business relationships with other entities to produce subject merchandise or a significant input into the production of subject merchandise and the Secretary concludes, based on record information, that those requirements contributed to cost distortions of subject merchandise or distortions in the price or cost of a significant input into the production of subject merchandise in the subject country during the period of investigation or review;

(10) A government, government-controlled entity, or other public entity in the subject country does not enforce its property (including intellectual property), human rights, labor, or environmental protection laws and policies, or those laws and policies are otherwise shown to be ineffective with respect to either a producer or exporter of subject merchandise, or to a producer or supplier of a significant input into the production of subject merchandise in the subject country and the Secretary concludes, based on record information, that the lack of enforcement or effectiveness of such laws and policies contributed to cost distortions of subject merchandise or distortions in the price or cost of a significant input into the production of subject merchandise during the period of investigation or review;

(11) A government, government-controlled entity, or other public entity in the subject country does not implement property (including intellectual property), human rights, labor, or environmental protection laws and policies and the Secretary concludes, based on record information, that the absence of such laws and policies contributed to cost distortions of subject merchandise, or distortions in the price or cost of a significant input into the production of subject merchandise in the subject country during the period of investigation or review; and

(12) Nongovernmental entities take actions which the Secretary concludes, based on record information, contributed to cost distortions of subject merchandise or distortions in the price or cost of a significant input into the production of subject merchandise in the subject country during the period of investigation or review. Actions that result in distortive prices and costs by nongovernmental entities covered by this example include, but are not limited to, the formation of business relationships between one or more producers of subject merchandise and suppliers of significant inputs to the production of subject merchandise, including mutually-beneficial strategic alliances or noncompetitive arrangements, as well as sales by third-country exporters of significant inputs into the

subject country for prices for less than fair value.

(h) *A particular market situation which contributes to distortions in the cost of materials and fabrication or other processing of any kind, such that the costs do not accurately reflect the cost of production in the ordinary course of trade, may also contribute to a particular market situation that prevents or does not permit a proper comparison of prices.* If the Secretary determines that a particular market situation existed during the period of investigation or review such that the cost of materials and fabrication or other processing of any kind did not accurately reflect the cost of production of subject merchandise in the ordinary course of trade, the Secretary may consider, based on record information, whether that particular market situation also contributed to the circumstance or set of circumstances that prevented, or did not permit, a proper comparison of home market or third country sales prices with export prices or constructed export prices, in accordance with section 771(15)(C) of the Act.

[89 FR 20837, Mar. 25, 2024]

Subpart E—Identification and Measurement of Countervailable Subsidies

SOURCE: 63 FR 65407, Nov. 25, 1998, unless otherwise noted.

§ 351.501 Scope.

The provisions of this subpart E set forth rules regarding the identification and measurement of countervailable subsidies. Where this subpart E does not expressly deal with a particular type of alleged subsidy, the Secretary will identify and measure the subsidy, if any, in accordance with the underlying principles of the Act and this subpart E.

§ 351.502 Specificity of domestic subsidies.

(a) *Sequential analysis.* In determining whether a subsidy is *de facto* specific, the Secretary will examine the factors contained in section 771(5A)(D)(iii) of the Act sequentially in order of their appearance. If a single factor warrants

a finding of specificity, the Secretary will not undertake further analysis.

(b) *Characteristics of a “group.”* In determining whether a subsidy is being provided to a “group” of enterprises or industries within the meaning of section 751(5A)(D) of the Act, the Secretary is not required to determine whether there are shared characteristics among the enterprises or industries that are eligible for, or actually receive, a subsidy.

(c) *Traded goods sector.* In determining whether a subsidy is being provided to a “group” of enterprises or industries within the meaning of section 771(5A)(D) of the Act, the Secretary normally will consider enterprises that buy or sell goods internationally to comprise such a group.

(d) *Disaster relief.* The Secretary will not regard disaster relief including pandemic relief as being specific under section 771(5A)(D) of the Act if such relief constitutes general assistance available to anyone in the area affected by the disaster.

(e) *Employment assistance.* The Secretary will not regard employment assistance programs as being specific under section 771(5A)(D) if such assistance is provided solely with respect to employment of general categories of workers such as those based on age, gender, disability, long-term unemployment, veteran, rural or urban status and is available to everyone hired within those categories without any industry or enterprise restrictions.

[63 FR 65407, Nov. 25, 1998, as amended at 85 FR 6043, Feb. 4, 2020; 89 FR 101765, Dec. 16, 2024]

§ 351.503 Benefit.

(a) *Specific rules.* In the case of a government program for which a specific rule for the measurement of a benefit is contained in this subpart E, the Secretary will measure the extent to which a financial contribution (or income or price support) confers a benefit as provided in that rule. For example, § 351.504(a) prescribes the specific rule for measurement of the benefit of grants.

(b) *Other subsidies—(1) In general.* For other government programs, the Secretary normally will consider a benefit to be conferred where a firm pays less

for its inputs (*e.g.*, money, a good, or a service) than it otherwise would pay in the absence of the government program, or receives more revenues than it otherwise would earn.

(2) *Exception.* Paragraph (b)(1) of this section is not intended to limit the ability of the Secretary to impose countervailing duties when the facts of a particular case establish that a financial contribution (or income or price support) has conferred a benefit, even if that benefit does not take the form of a reduction in input costs or an enhancement of revenues. When paragraph (b)(1) of this section is not applicable, the Secretary will determine whether a benefit is conferred by examining whether the alleged program or practice has common or similar elements to the four illustrative examples in sections 771(5)(E)(i) through (iv) of the Act.

(3) *Contingent liabilities and assets.* For the provision of a contingent liability or asset not otherwise addressed under a specific rule identified under paragraph (a) of this section, the Secretary will treat the balance or value of the contingent liability or assets as an interest-free provision of funds and will calculate the benefit using, where appropriate, either a short-term or long-term commercial interest rate.

(c) *Distinction from effect of subsidy—(1) In general.* In determining whether a benefit is conferred, the Secretary is not required to consider the effect or impact of the government action on the firm’s performance, including its costs, prices, output, or whether the firm’s behavior is otherwise altered.

(2) *Subsidy provided to support compliance with a government-imposed mandate.* When a government provides assistance to a firm to comply with a government regulation, requirement or obligation, the Secretary, in measuring the benefit from the subsidy, will not consider whether the firm incurred a cost in complying with the government-imposed regulation, requirement, or obligation.

(d) *Varying financial contribution levels—(1) In general.* Where a government program provides varying levels of financial contributions based on different eligibility criteria, and one or

more of such levels is not specific within the meaning of § 351.502, a benefit is conferred to the extent that a firm receives a greater financial contribution than the financial contributions provided at a non-specific level under the program. The preceding sentence shall apply only to the extent the Secretary determines that the varying levels of financial contributions are set forth in a statute, decree, regulation, or other official act; that the levels are clearly delineated and identifiable; and that the firm would have been eligible for the non-specific level of contributions.

(2) *Exception.* Paragraph (d)(1) of this section shall not apply where the statute specifies a commercial test for determining the benefit.

(e) *Tax consequences.* In calculating the amount of a benefit, the Secretary will not consider the tax consequences of the benefit.

[63 FR 65407, Nov. 25, 1998, as amended at 89 FR 20840, Mar. 25, 2024; 89 FR 101765, Dec. 16, 2024]

§ 351.504 Grants.

(a) *Benefit.* In the case of a grant, a benefit exists in the amount of the grant.

(b) *Time of receipt of benefit.* In the case of a grant, the Secretary normally will consider a benefit as having been received on the date on which the firm received the grant.

(c) *Allocation of a grant to a particular time period.* The Secretary will allocate the benefit from a grant to a particular time period in accordance with § 351.524.

§ 351.505 Loans.

(a) *Benefit—(1) In general.* In the case of a loan, a benefit exists to the extent that the amount a firm pays on the government-provided loan is less than the amount the firm would pay on a comparable commercial loan(s) that the firm could actually obtain on the market. *See* section 771(5)(E)(ii) of the Act. In making the comparison called for in the preceding sentence, the Secretary normally will rely on effective interest rates.

(2) *“Comparable commercial loan” defined—(i) “Comparable” defined.* In selecting a loan that is “comparable” to the government-provided loan, the Sec-

retary normally will place primary emphasis on similarities in the structure of the loans (*e.g.*, fixed interest rate v. variable interest rate), the maturity of the loans (*e.g.*, short-term v. long-term), and the currency in which the loans are denominated.

(ii) *“Commercial” defined.* In selecting a “commercial” loan, the Secretary normally will use a loan taken out by the firm from a commercial lending institution or a debt instrument issued by the firm in a commercial market. Also, the Secretary will treat a loan from a government-owned bank as a commercial loan, unless there is evidence that the loan from a government-owned bank is provided on non-commercial terms or at the direction of the government. However, the Secretary will not consider a loan provided under a government program, or a loan provided by a government-owned special purpose bank, to be a commercial loan for purposes of selecting a loan to compare with a government-provided loan.

(iii) *Long-term loans.* In selecting a comparable loan, if the government-provided loan is a long-term loan, the Secretary normally will use a loan the terms of which were established during, or immediately before, the year in which the terms of the government-provided loan were established.

(iv) *Short-term loans.* In making the comparison required under paragraph (a)(1) of this section, if the government-provided loan is a short-term loan, the Secretary normally will use an annual average of the interest rates on comparable commercial loans during the year in which the government-provided loan was taken out, weighted by the principal amount of each loan. However, if the Secretary finds that interest rates fluctuated significantly during the period of investigation or review, the Secretary will use the most appropriate interest rate based on the circumstances presented.

(3) *“Could actually obtain on the market” defined—(i) In general.* In selecting a comparable commercial loan that the recipient “could actually obtain on the market,” the Secretary normally will rely on the actual experience of the

firm in question in obtaining comparable commercial loans for both short-term and long-term loans.

(ii) *Where the firm has no comparable commercial loans.* If the firm did not take out any comparable commercial loans during the period referred to in paragraph (a)(2)(iii) or (a)(2)(iv) of this section, the Secretary may use a national average interest rate for comparable commercial loans.

(iii) *Exception for uncreditworthy companies.* If the Secretary finds that a firm that received a government-provided long-term loan was uncreditworthy, as defined in paragraph (a)(4) of this section, the Secretary normally will calculate the interest rate to be used in making the comparison called for by paragraph (a)(1) of this section according to the following formula:

$$i_b = [(1 - q_n)(1 + i_r)^n / (1 - p_n)]^{1/n} - 1,$$

where:

n = the term of the loan;

i_b = the benchmark interest rate for uncreditworthy companies;

i_r = the long-term interest rate that would be paid by a creditworthy company;

p_n = the probability of default by an uncreditworthy company within n years; and

q_n = the probability of default by a creditworthy company within n years.

“Default” means any missed or delayed payment of interest and/or principal, bankruptcy, receivership, or distressed exchange. For values of p_n , the Secretary will normally rely on the average cumulative default rates reported for the Caa to C-rated category of companies in Moody’s study of historical default rates of corporate bond issuers. For values of q_n , the Secretary will normally rely on the average cumulative default rates reported for the Aaa to Baa-rated categories of companies in Moody’s study of historical default rates of corporate bond issuers.

(4) *Uncreditworthiness—(i) In general.* The Secretary will consider a firm to be uncreditworthy if the Secretary determines that, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. The Secretary will determine uncreditworthiness on a case-by-case

basis, and may, in appropriate circumstances, focus its creditworthiness analysis on the project being financed rather than the company as a whole. In making the creditworthiness determination, the Secretary may examine, among other factors, the following:

(A) The receipt by the firm of comparable commercial long-term loans;

(B) The present and past financial health of the firm, as reflected in various financial indicators calculated from the firm’s financial statements and accounts;

(C) The firm’s recent past and present ability to meet its costs and fixed financial obligations with its cash flow; and

(D) Evidence of the firm’s future financial position, such as market studies, country and industry economic forecasts, and project and loan appraisals prepared prior to the agreement between the lender and the firm on the terms of the loan.

(ii) *Significance of long-term commercial loans.* In the case of firms not owned by the government, the receipt by the firm of comparable long-term commercial loans, unaccompanied by a government-provided guarantee, will normally constitute dispositive evidence that the firm is not uncreditworthy.

(iii) *Significance of prior subsidies.* In determining whether a firm is uncreditworthy, the Secretary will ignore current and prior subsidies received by the firm.

(iv) *Discount rate.* When the creditworthiness of a firm is considered in connection with the allocation of non-recurring benefits, the Secretary will rely on information available in the year in which the government agreed to provide the subsidy conferring a non-recurring benefit.

(5) *Long-term variable rate loans—(i) In general.* In the case of a long-term variable rate loan, the Secretary normally will make the comparison called for by paragraph (a)(1) of this section by relying on a comparable commercial loan with a variable interest rate. The Secretary then will compare the variable interest rates on the comparable commercial loan and the government-provided loan for the year in which the terms of the government-provided loan

were established. If the comparison shows that the interest rate on the government-provided loan was equal to or higher than the interest rate on the comparable commercial loan, the Secretary will not consider the government-provided loan as having conferred a benefit. If the comparison shows that the interest rate on the government-provided loan was lower, the Secretary will consider the government-provided loan as having conferred a benefit, and, if the other criteria for a countervailable subsidy are satisfied, will calculate the amount of the benefit in accordance with paragraph (c)(4) of this section.

(ii) *Exception.* If the Secretary is unable to make the comparison described in paragraph (a)(5)(i) of this section or if the comparison described in paragraph (a)(5)(i) of this section would yield an inaccurate measure of the benefit, the Secretary may modify the method described in paragraph (a)(5)(i) of this section.

(6) *Allegations—(i) Allegation of uncreditworthiness required.* Normally, the Secretary will not consider the uncreditworthiness of a firm absent a specific allegation by the petitioner that is supported by information establishing a reasonable basis to believe or suspect that the firm is uncreditworthy.

(ii) *Government-owned banks.* The Secretary will not investigate a loan provided by a government-owned bank absent a specific allegation that is supported by information reasonably available to petitioners indicating that:

(A) The loan meets the specificity criteria in accordance with section 771(5A) of the Act; and

(B) A benefit exists within the meaning of paragraph (a)(1) of this section.

(iii) *Initiation standard for government-owned policy banks.* An interested party will normally meet the initiation threshold for specificity under paragraph (a)(6)(ii)(A) of this section with respect to section 771(5A)(D) of the Act if the party can sufficiently allege that the government-owned policy bank provides loans pursuant to government policies or directives and loan distribution information for the bank is not reasonably available. A policy bank is

a government-owned special purpose bank.

(b) *Time of receipt of benefit.* The Secretary normally will consider a benefit as having been received in the year in which the firm otherwise would have had to make a payment on the comparable commercial loan.

(c) *Allocation of benefit to a particular time period—(1) Short-term loans.* The Secretary will allocate (expense) the benefit from a short-term loan to the year(s) in which the firm is due to make interest payments on the loan.

(2) *Long-term loans.* The Secretary normally will calculate the subsidy amount to be assigned to a particular year by calculating the difference in interest payments for that year, *i.e.*, the difference between the interest paid by the firm in that year on the government-provided loan and the interest the firm would have paid on the comparable commercial benchmark loan.

(d) *Treatment of outstanding loans as grant after three years of no payments of interest or principal.* With the exception of debt forgiveness tied to a particular loan and contingent liability interest-free loans, addressed in §351.508 and paragraph (e) of this section, the Secretary will normally treat a loan as a grant if no payments on the loan have been made in three years unless the loan recipient can demonstrate that nonpayment is consistent with the terms of a comparable commercial loan it could obtain on the market, or the payments on the loan are consistent with the terms of the loan contract.

(e) *Contingent liability interest-free loans—(1) Treatment as loans.* In the case of an interest-free loan for which the repayment obligation is contingent upon the company taking some future action or achieving some goal in fulfillment of the loan's requirements, the Secretary normally will treat any balance on the loan outstanding during a year as an interest-free, short-term loan in accordance with paragraphs (a), (b), and (c)(1) of this section. However, if the event upon which repayment of the loan depends will occur at a point in time more than one year after the receipt of the contingent liability loan,

the Secretary will use a long-term interest rate as the benchmark in accordance with paragraphs (a), (b), and (c)(2) of this section.

(2) *Treatment as grants.* If at any point in time the Secretary determines that the event upon which repayment depends is not a viable contingency or the loan recipient has met the contingent action or goal and the government has not taken meaningful action to collect repayment, the Secretary will treat the outstanding balance of the loan as a grant received in the year in which this condition manifests itself.

[63 FR 65407, Nov. 25, 1998, as amended at 89 FR 20840, Mar. 25, 2024; 89 FR 101765, Dec. 16, 2024]

§ 351.506 Loan guarantees.

(a) *Benefit—(1) In general.* In the case of a loan guarantee, a benefit exists to the extent that the total amount a firm pays for the loan with the government-provided guarantee is less than the total amount the firm would pay for a comparable commercial loan that the firm could actually obtain on the market absent the government-provided guarantee, including any difference in guarantee fees. *See* section 771(5)(E)(iii) of the Act. The Secretary will select a comparable commercial loan in accordance with § 351.505(a).

(2) *Government acting as owner.* In situations where a government, acting as the owner of a firm, provides a loan guarantee to that firm, the guarantee does not confer a benefit if the respondent provides evidence demonstrating that it is normal commercial practice in the country in question for shareholders to provide guarantees to their firms under similar circumstances and on comparable terms.

(b) *Time of receipt of benefit.* In the case of a loan guarantee, the Secretary normally will consider a benefit as having been received in the year in which the firm otherwise would have had to make a payment on the comparable commercial loan.

(c) *Allocation of benefit to a particular time period.* In allocating the benefit from a government-provided loan guarantee to a particular time period, the Secretary will use the methods set forth in § 351.505(c) regarding loans.

§ 351.507 Equity.

(a) *Benefit—(1) In general.* In the case of a government-provided equity infusion, a benefit exists to the extent that the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made. *See* section 771(5)(E)(i) of the Act.

(2) *Private investor prices available—(i) In general.* Except as provided in paragraph (a)(2)(iii) of this section, the Secretary will consider an equity infusion as being inconsistent with usual investment practice (*see* paragraph (a)(1) of this section) if the price paid by the government for newly issued shares is greater than the price paid by private investors for the same (or similar form of) newly issued shares.

(ii) *Timing of private investor prices.* In selecting a private investor price under paragraph (a)(2)(i) of this section, the Secretary will rely on sales of newly issued shares made reasonably concurrently with the newly issued shares purchased by the government.

(iii) *Significant private sector participation required.* The Secretary will not use private investor prices under paragraph (a)(2)(i) of this section if the Secretary concludes that private investor purchases of newly issued shares are not significant.

(iv) *Adjustments for “similar” form of equity.* Where the Secretary uses private investor prices for a form of shares that is similar to the newly issued shares purchased by the government (*see* paragraph (a)(2)(i) of this section), the Secretary, where appropriate, will adjust the prices to reflect the differences in the forms of shares.

(3) *Actual private investor prices unavailable—(i) In general.* If actual private investor prices are not available under paragraph (a)(2) of this section, the Secretary will determine whether the firm funded by the government-provided equity was equityworthy or unequityworthy at the time of the equity infusion (*see* paragraph (a)(4) of this section). If the Secretary determines that the firm was equityworthy, the Secretary will apply paragraph (a)(5) of this section to determine

whether the equity infusion was inconsistent with the usual investment practice of private investors. A determination by the Secretary that the firm was unequityworthy will constitute a determination that the equity infusion was inconsistent with usual investment practice of private investors, and the Secretary will apply paragraph (a)(6) of this section to measure the benefit attributable to the equity infusion.

(4) *Equityworthiness*—(i) *In general.* The Secretary will consider a firm to have been equityworthy if the Secretary determines that, from the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable period of time. The Secretary may, in appropriate circumstances, focus its equityworthiness analysis on a project rather than the company as a whole. In making the equityworthiness determination, the Secretary may examine the following factors, among others:

(A) Objective analyses of the future financial prospects of the recipient firm or the project as indicated by, *inter alia*, market studies, economic forecasts, and project or loan appraisals prepared prior to the government-provided equity infusion in question;

(B) Current and past indicators of the recipient firm's financial health calculated from the firm's statements and accounts, adjusted, if appropriate, to conform to generally accepted accounting principles;

(C) Rates of return on equity in the three years prior to the government equity infusion; and

(D) Equity investment in the firm by private investors.

(ii) *Significance of a pre-infusion objective analysis.* For purposes of making an equityworthiness determination, the Secretary will request and normally require from the respondents the information and analysis completed prior to the infusion, upon which the government based its decision to provide the equity infusion (*see*, paragraph (a)(4)(i)(A) of this section). Absent the existence or provision of an objective analysis, containing information typi-

cally examined by potential private investors considering an equity investment, the Secretary will normally determine that the equity infusion received provides a countervailable benefit within the meaning of paragraph (a)(1) of this section. The Secretary will not necessarily make such a determination if the absence of an objective analysis is consistent with the actions of reasonable private investors in the country in question.

(iii) *Significance of prior subsidies.* In determining whether a firm was equityworthy, the Secretary will ignore current and prior subsidies received by the firm.

(5) *Benefit where firm is equityworthy.* If the Secretary determines that the firm or project was equityworthy (*see* paragraph (a)(4) of this section), the Secretary will examine the terms and the nature of the equity purchased to determine whether the investment was otherwise inconsistent with the usual investment practice of private investors. If the Secretary determines that the investment was inconsistent with usual private investment practice, the Secretary will determine the amount of the benefit conferred on a case-by-case basis.

(6) *Benefit where firm is unequityworthy.* If the Secretary determines that the firm or project was unequityworthy (*see* paragraph (a)(4) of this section), a benefit to the firm exists in the amount of the equity infusion.

(7) *Allegations.* The Secretary will not investigate an equity infusion in a firm absent a specific allegation by the petitioner which is supported by information establishing a reasonable basis to believe or suspect that the firm received an equity infusion that provides a countervailable benefit within the meaning of paragraph (a)(1) of this section.

(b) *Time of receipt of benefit.* In the case of a government-provided equity infusion, the Secretary normally will consider the benefit to have been received on the date on which the firm received the equity infusion.

(c) *Outside investor standard.* Any analysis made under paragraph (a) of this section will be based upon the

§ 351.508

standard of a new outside private investor. The Secretary normally will consider whether an outside private investor, under its usual investment practice, would make an equity investment in the firm, and not whether a private investor who has already invested in the firm would continue to invest in the firm.

(d) *Allocation of benefit to a particular time period.* The benefit conferred by an equity infusion shall be allocated over a period of 12 years or the same time period as a non-recurring subsidy under § 351.524(d), whichever is longer.

[63 FR 65407, Nov. 25, 1998, as amended at 89 FR 20841, Mar. 25, 2024]

§ 351.508 Debt forgiveness.

(a) *Benefit.* In the case of an assumption or forgiveness of a firm's debt obligation, a benefit exists equal to the amount of the principal and/or interest (including accrued, unpaid interest) that the government has assumed or forgiven. In situations where the entity assuming or forgiving the debt receives shares in a firm in return for eliminating or reducing the firm's debt obligation, the Secretary will determine the existence of a benefit under § 351.507 (equity infusions).

(b) *Time of receipt of benefit.* In the case of a debt or interest assumption or forgiveness, the Secretary normally will consider the benefit as having been received as of the date on which the debt or interest was assumed or forgiven.

(c) *Allocation of benefit to a particular time period—(1) In general.* The Secretary will treat the benefit determined under paragraph (a) of this section as a non-recurring subsidy and will allocate the benefit to a particular year in accordance with § 351.524(d), or over a period of 12 years, whichever is longer.

(2) *Exception.* Where an interest assumption is tied to a particular loan and where a firm can reasonably expect to receive the interest assumption at the time it applies for the loan, the Secretary will normally treat the interest assumption as a reduced-interest loan and allocate the benefit to a par-

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ticular year in accordance with § 351.505(c) (loans).

[63 FR 65407, Nov. 25, 1998, as amended at 89 FR 20841, Mar. 25, 2024]

§ 351.509 Direct taxes.

(a) *Benefit—(1) Exemption or remission of taxes.* In the case of a program that provides for a full or partial exemption or remission of a direct tax (for example, an income tax), or a reduction in the base used to calculate a direct tax, a benefit exists to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program, including as a result of being located in an area designated by the government as being outside the customs territory of the country.

(2) *Deferral of taxes.* In the case of a program that provides for a deferral of direct taxes, a benefit exists to the extent that appropriate interest charges are not collected. Normally, a deferral of direct taxes will be treated as a government-provided loan in the amount of the tax deferred, according to the methodology described in § 351.505. The Secretary will use a short-term interest rate as the benchmark for tax deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for tax deferrals of more than one year.

(b) *Time of receipt of benefit—(1) Exemption or remission of taxes.* In the case of a full or partial exemption or remission of a direct tax, the Secretary normally will consider the benefit as having been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the exemption or remission. For all exemptions or remissions related to income taxes, this date will be the date on which the firm filed its tax return.

(2) *Deferral of taxes.* In the case of a tax deferral of one year or less, the Secretary normally will consider the benefit as having been received on the date on which the deferred tax becomes due. In the case of a multi-year deferral, the Secretary normally will consider the benefit as having been received on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally

will allocate (expense) the benefit of a full or partial exemption, remission, or deferral of a direct tax to the year in which the benefit is considered to have been received under paragraph (b) of this section.

(d) *Benefit not tied to particular markets or products.* If a program provides for a full or partial exemption, reduction, credit, or remission of an income tax, the Secretary normally will consider any benefit to be not tied with respect to a particular market under § 351.525(b)(4) or to a particular product under § 351.525(b)(5).

[63 FR 65407, Nov. 25, 1998, as amended at 89 FR 20841, Mar. 25, 2024; 89 FR 101766, Dec. 16, 2024]

§ 351.510 Indirect taxes and import charges (other than export programs).

(a) *Benefit—(1) Exemption or remission of taxes.* In the case of a program other than an export program that provides for the full or partial exemption or remission of an indirect tax or an import charge, a benefit exists to the extent that the taxes or import charges paid by a firm as a result of the program are less than the taxes the firm would have paid in the absence of the program, including as a result of being located in an area designated by the government as being outside the customs territory of the country.

(2) *Deferral of taxes.* In the case of a program, other than an export program, that provides for a deferral of indirect taxes or import charges, a benefit exists to the extent that appropriate interest charges are not collected. Normally, a deferral of indirect taxes or import charges will be treated as a government-provided loan in the amount of the taxes deferred, according to the methodology described in § 351.505. The Secretary will use a short-term interest rate as the benchmark for tax deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for tax deferrals of more than one year.

(b) *Time of receipt of benefit—(1) Exemption or remission of taxes.* In the case of a full or partial exemption or remission of an indirect tax or import charge, the Secretary normally will consider the benefit as having been re-

ceived at the time the recipient firm otherwise would be required to pay the indirect tax or import charge.

(2) *Deferral of taxes.* In the case of the deferral of an indirect tax or import charge of one year or less, the Secretary normally will consider the benefit as having been received on the date on which the deferred tax becomes due. In the case of a multi-year deferral, the Secretary normally will consider the benefit as having been received on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of a full or partial exemption, remission, or deferral described in paragraph (a) of this section to the year in which the benefit is considered to have been received under paragraph (b) of this section.

[63 FR 65407, Nov. 25, 1998, as amended at 89 FR 101766, Dec. 16, 2024]

§ 351.511 Provision of goods or services.

(a) *Benefit—(1) In general.* In the case where goods or services are provided, a benefit exists to the extent that such goods or services are provided for less than adequate remuneration. See section 771(5)(E)(iv) of the Act.

(2) *“Adequate Remuneration” defined—*
(i) *In general.* The Secretary will normally seek to measure the adequacy of remuneration by comparing the government price to a market-determined price for the good or service resulting from actual transactions in the country in question. Such a price could include prices stemming from actual transactions between private parties or actual imports. In choosing such transactions or sales, the Secretary will consider product similarity; quantities sold or imported; and other factors affecting comparability.

(ii) *Actual market-determined price unavailable.* If there is no useable market-determined price with which to make the comparison under paragraph (a)(2)(i) of this section, the Secretary will seek to measure the adequacy of remuneration by comparing the government price to a world market price where it is reasonable to conclude that such price would be available to purchasers in the country in question.

Where there is more than one commercially available world market price, the Secretary will average such prices to the extent practicable, making due allowance for factors affecting comparability.

(iii) *World market price unavailable.* If there is no world market price available to purchasers in the country in question, the Secretary will normally measure the adequacy of remuneration by assessing whether the government price is consistent with market principles. In making an assessment of whether a government price is consistent with market principles under this provision, the Secretary may assess such factors as costs (including rates of return sufficient to ensure future operations), the government's price setting methodology, possible price discrimination, or a government price derived from actual sales from competitively run government auctions if the government auction:

(A) Uses competitive bid procedures that are open without restriction on the use of the good or service;

(B) Is open without restriction to all bidders, including foreign enterprises, and protects the confidentiality of the bidders;

(C) Accounts for the substantial majority of the actual government provision of the good or service in the jurisdiction in question; and

(D) Determines the winner based solely on price.

(iv) *Use of delivered prices.* In measuring adequate remuneration under paragraph (a)(2)(i) or (a)(2)(ii) of this section, the Secretary will adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product. This adjustment will include delivery charges and import duties.

(v) *Exclusion of certain prices.* In measuring the adequacy of remuneration under this section, the Secretary may exclude certain prices from its analysis if interested parties have demonstrated, with sufficient information, that those prices are derived from countries with weak, ineffective, or nonexistent property (including intellectual property), human rights, labor, or environmental protections, and that

the lack of such protections would likely impact such prices.

(b) *Time of receipt of benefit.* In the case of the provision of a good or service, the Secretary normally will consider a benefit as having been received as of the date on which the firm pays or, in the absence of payment, was due to pay for the government-provided good or service.

(c) *Allocation of benefit to a particular time period.* In the case of the provision of a good or service, the Secretary will normally allocate (expense) the benefit to the year in which the benefit is considered to have been received under paragraph (b) of this section. In the case of the provision of infrastructure, the Secretary will normally treat the benefit as non-recurring and will allocate the benefit to a particular year in accordance with § 351.524(d).

(d) *Exception for general infrastructure.* A financial contribution does not exist in the case of the government provision of general infrastructure. General infrastructure is defined as infrastructure that is created for the broad societal welfare of a country, region, state or municipality.

[63 FR 65407, Nov. 25, 1998, as amended at 89 FR 20841, Mar. 25, 2024; 89 FR 101766, Dec. 16, 2024]

§ 351.512 Purchase of goods.

(a) *Benefit*—(1) *In general.* In the case where goods are purchased by the government from a firm, in accordance with section 771(5)(E)(iv) of the Act a benefit exists to the extent that such goods are purchased for more than adequate remuneration.

(2) *Adequate remuneration defined*—(i) *In general.* The Secretary will normally seek to measure the adequacy of remuneration by comparing the price paid to the firm for the good by the government to a market-determined price for the good based on actual transactions, including imports, between private parties in the country in question, but if such prices are not available, then to a world market price or prices for the good.

(ii) *Actual market-determined prices unavailable.* If there are no market-determined domestic or world market prices available, the Secretary may measure

the adequacy of remuneration by analyzing any premium in the request for bid or government procurement regulations provided to domestic suppliers of the good or use any other methodology to assess whether the price paid to the firm for the good by the government is consistent with market principles.

(iii) *Exclusion of certain prices.* In measuring the adequacy of remuneration under this section, the Secretary may exclude certain prices from a particular country from its analysis if the Secretary determines that interested parties have demonstrated, with sufficient information, that certain actions, including government laws or policies, such as price or production mandates or controls, likely impact such prices.

(iv) *Use of ex-factory or ex-works price.* In measuring adequate remuneration under paragraph (a)(2)(i) or (ii) of this section, the Secretary will use an ex-factory or ex-works comparison price and price paid to the firm for the good by the government in order to measure the benefit conferred to the recipient within the meaning of section 771(5)(E) of the Act. The Secretary will, if necessary, adjust the comparison price and the price paid to the firm by the government to remove all delivery charges, import duties, and taxes to derive an ex-factory or ex-works price.

(3) *Exception when the government is both a provider and purchaser of the good.* When the government is both a provider and a purchaser of the good, such as electricity, the Secretary will normally measure the benefit to the recipient firm by comparing the price at which the government provided the good to the price at which the government purchased the same good from the firm.

(b) *Time of receipt of benefit.* In the case of the purchase of a good, the Secretary normally will consider a benefit as having been received as of the date on which the firm receives payment for the purchased good.

(c) *Allocation of benefit to a particular time period.* In the case of the purchase of a good, the Secretary will normally allocate (expense) the benefit to the year in which the benefit is considered to have been received under paragraph (b) of this section. However, if the Secretary considers this purchase to be for

or tied to capital assets such as land, buildings, or capital equipment, the benefit will normally be allocated over time as defined in § 351.524(d)(2).

[89 FR 101766, Dec. 16, 2024]

§ 351.513 Worker-related subsidies.

(a) *Benefit.* In the case of a program that provides assistance to workers, a benefit exists to the extent that the assistance relieves a firm of an obligation that it normally would incur.

(b) *Time of receipt of benefit.* In the case of assistance provided to workers, the Secretary normally will consider the benefit as having been received by the firm on the date on which the payment is made that relieves the firm of the relevant obligation.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) the benefit from assistance provided to workers to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.514 Export subsidies.

(a) *In general.* The Secretary will consider a subsidy to be an export subsidy if the Secretary determines that eligibility for, approval of, or the amount of, a subsidy is contingent upon export performance. In applying this section, the Secretary will consider a subsidy to be contingent upon export performance if the provision of the subsidy is, in law or in fact, tied to actual or anticipated exportation or export earnings, alone or as one of two or more conditions.

(b) *Exception.* In the case of export promotion activities of a government, a benefit does not exist if the Secretary determines that the activities consist of general informational activities that do not promote particular products over others.

§ 351.515 Internal transport and freight charges for export shipments.

(a) *Benefit—(1) In general.* In the case of internal transport and freight charges on export shipments, a benefit exists to the extent that the charges paid by a firm for transport or freight with respect to goods destined for export are less than what the firm would

have paid if the goods were destined for domestic consumption. The Secretary will consider the amount of the benefit to equal the difference in amounts paid.

(2) *Exception.* For purposes of paragraph (a)(1) of this section, a benefit does not exist if the Secretary determines that:

(i) Any difference in charges is the result of an arm's-length transaction between the supplier and the user of the transport or freight service; or

(ii) The difference in charges is commercially justified.

(b) *Time of receipt of benefit.* In the case of internal transport and freight charges for export shipments, the Secretary normally will consider the benefit as having been received by the firm on the date on which the firm paid, or in the absence of payment was due to pay, the charges.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) the benefit from internal transport and freight charges for export shipments to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.516 Price preferences for inputs used in the production of goods for export.

(a) *Benefit—(1) In general.* In the case of a program involving the provision by governments or their agencies, either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, a benefit exists to the extent that the Secretary determines that the terms or conditions on which the products or services are provided are more favorable than the terms or conditions applicable to the provision of like or directly competitive products or services for use in the production of goods for domestic consumption unless, in the case of products, such terms or conditions are not more favorable than those commercially available on world markets to exporters.

(2) *Amount of benefit.* In the case of products provided under such schemes, the Secretary will determine the amount of the benefit by comparing

the price of products used in the production of exported goods to the commercially available world market price of such products, inclusive of delivery charges.

(3) *Commercially available.* For purposes of paragraph (a)(2) of this section, *commercially available* means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

(b) *Time of receipt of benefit.* In the case of a benefit described in paragraph (a)(1) of this section, the Secretary normally will consider the benefit to have been received as of the date on which the firm paid, or in the absence of payment was due to pay, for the product.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) benefits described in paragraph (a)(1) of this section to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.517 Exemption or remission upon export of indirect taxes.

(a) *Benefit.* In the case of the exemption or remission upon export of indirect taxes, a benefit exists to the extent that the Secretary determines that the amount remitted or exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

(b) *Time of receipt of benefit.* In the case of the exemption or remission upon export of an indirect tax, the Secretary normally will consider the benefit as having been received as of the date of exportation.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) the benefit from the exemption or remission upon export of indirect taxes to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.518 Exemption, remission, or deferral upon export of prior-stage cumulative indirect taxes.

(a) *Benefit—(1) Exemption of prior-stage cumulative indirect taxes.* In the case of a program that provides for the

exemption of prior-stage cumulative indirect taxes on inputs used in the production of an exported product, a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste, or if the exemption covers taxes other than indirect taxes that are imposed on the input. If the Secretary determines that the exemption of prior-stage cumulative indirect taxes confers a benefit, the Secretary normally will consider the amount of the benefit to be the prior-stage cumulative indirect taxes that otherwise would have been paid on the inputs not consumed in the production of the exported product, making normal allowance for waste, and the amount of charges other than import charges covered by the exemption.

(2) *Remission of prior-stage cumulative indirect taxes.* In the case of a program that provides for the remission of prior-stage cumulative indirect taxes on inputs used in the production of an exported product, a benefit exists to the extent that the amount remitted exceeds the amount of prior-stage cumulative indirect taxes paid on inputs that are consumed in the production of the exported product, making normal allowance for waste. If the Secretary determines that the remission of prior-stage cumulative indirect taxes confers a benefit, the Secretary normally will consider the amount of the benefit to be the difference between the amount remitted and the amount of the prior-stage cumulative indirect taxes on inputs that are consumed in the production of the export product, making normal allowance for waste.

(3) *Deferral of prior-stage cumulative indirect taxes.* In the case of a program that provides for a deferral of prior-stage cumulative indirect taxes on an exported product, a benefit exists to the extent that the deferral extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste, and the government does not charge appropriate interest on the taxes deferred. If the Secretary determines that a benefit exists, the Secretary will normally treat the deferral as a government-provided loan in the amount

of the tax deferred, according to the methodology described in § 351.505. The Secretary will use a short-term interest rate as the benchmark for tax deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for tax deferrals of more than one year.

(4) *Exception.* Notwithstanding the provisions in paragraphs (a)(1), (a)(2), and (a)(3) of this action, the Secretary will consider the entire amount of the exemption, remission or deferral to confer a benefit, unless the Secretary determines that:

(i) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and to confirm which indirect taxes are imposed on these inputs, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export; or

(ii) If the government in question does not have a system or procedure in place, if the system or procedure is not reasonable, or if the system or procedure is instituted and considered reasonable, but is found not to be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, in what amounts, and which indirect taxes are imposed on the inputs.

(b) *Time of receipt of benefit.* In the case of the exemption, remission, or deferral of priorstage cumulative indirect taxes, the Secretary normally will consider the benefit as having been received:

(1) In the case of an exemption, as of the date of exportation;

(2) In the case of a remission, as of the date of exportation;

(3) In the case of a deferral of one year or less, on the date the deferred tax became due; and

(4) In the case of a multi-year deferral, on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of

the exemption, remission or deferral of prior-stage cumulative indirect taxes to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.519 Remission or drawback of import charges upon export.

(a) *Benefit*—(1) *In general.* The term “remission or drawback” includes full or partial exemptions and deferrals of import charges.

(i) *Remission or drawback of import charges.* In the case of the remission or drawback of import charges upon export, a benefit exists to the extent that the Secretary determines that the amount of the remission or drawback exceeds the amount of import charges on imported inputs that are consumed in the production of the exported product, making normal allowances for waste.

(ii) *Exemption of import charges.* In the case of an exemption of import charges upon export, a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowances for waste, or if the exemption covers charges other than import charges that are imposed on the input.

(iii) *Deferral of import charges.* In the case of a deferral, a benefit exists to the extent that the deferral extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste, and the government does not charge appropriate interest on the import charges deferred.

(2) *Substitution drawback.* “Substitution drawback” involves a situation in which a firm uses a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them. Substitution drawback does not necessarily result in the conferral of a benefit. However, a benefit exists if the Secretary determines that:

(i) The import and the corresponding export operations both did not occur within a reasonable time period, not to exceed two years; or

(ii) The amount drawn back exceeds the amount of the import charges lev-

ied initially on the imported inputs for which drawback is claimed.

(3) *Amount of the benefit*—(i) *Remission or drawback of import charges.* If the Secretary determines that the remission or drawback, including substitution drawback, of import charges confers a benefit under paragraph (a)(1) or (a)(2) of this section, the Secretary normally will consider the amount of the benefit to be the difference between the amount of import charges remitted or drawn back and the amount paid on imported inputs consumed in production for which remission or drawback was claimed.

(ii) *Exemption of import charges.* If the Secretary determines that the exemption of import charges upon export confers a benefit, the Secretary normally will consider the amount of the benefit to be the import charges that otherwise would have been paid on the inputs not consumed in the production of the exported product, making normal allowance for waste, and the amount of charges other than import charges covered by the exemption.

(iii) *Deferral of import charges.* If the Secretary determines that the deferral of import charges upon export confers a benefit, the Secretary will normally treat a deferral as a government-provided loan in the amount of the import charges deferred on the inputs not consumed in the production of the exported product, making normal allowance for waste, according to the methodology described in § 351.505. The Secretary will use a short-term interest rate as the benchmark for deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for deferrals of more than one year.

(4) *Exception.* Notwithstanding paragraph (a)(3) of this section, the Secretary will consider the entire amount of an exemption, deferral, remission or drawback to confer a benefit, unless the Secretary determines that:

(i) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and the system or procedure is reasonable, effective for the purposes intended, and is

based on generally accepted commercial practices in the country of export; or

(ii) If the government in question does not have a system or procedure in place, if the system or procedure is not reasonable, or if the system or procedure is instituted and considered reasonable, but is found not to be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts.

(b) *Time of receipt of benefit.* In the case of the exemption, deferral, remission or drawback, including substitution drawback, of import charges, the Secretary normally will consider the benefit as having been received:

(1) In the case of remission or drawback, as of the date of exportation;

(2) In the case of an exemption, as of the date of the exportation;

(3) In the case of a deferral of one year or less, on the date the import charges became due; and (4) In the case of a multi-year deferral, on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit from the exemption, deferral, remission or drawback of import charges to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.520 Export insurance.

(a) *Benefit—(1) In general.* In the case of export insurance, a benefit exists if the premium rates charged are inadequate to cover the long-term operating costs and losses of the program normally over a five-year period.

(2) *Amount of the benefit.* If the Secretary determines under paragraph (a)(1) of this section that premium rates are inadequate, the Secretary normally will calculate the amount of the benefit as the difference between the amount of premiums paid by the firm and the amount received by the firm under the insurance program during the period of investigation or review.

(b) *Time of receipt of benefit.* In the case of export insurance, the Secretary

normally will consider the benefit as having been received in the year in which the difference described in paragraph (a)(2) of this section occurs.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit from export insurance to the year in which the benefit is considered to have been received under paragraph (b) of this section.

[63 FR 65407, Nov. 25, 1998, as amended at 89 FR 20841, Mar. 25, 2024]

§ 351.521 Indirect taxes and import charges on capital goods and equipment (export programs).

(a) *Benefit—(1) Exemption or remission of taxes and import charges.* In the case of a program determined to be an export subsidy that provides for the full or partial exemption or remission of an indirect tax or an import charge on the purchase or import of capital goods and equipment, a benefit exists to the extent that the taxes or import charges paid by a firm as a result of the program are less than the taxes the firm would have paid in the absence of the program, including as a result of being located in an area designated by the government as being outside the customs territory of the country.

(2) *Deferral of taxes and import charges.* In the case that the program provides for a deferral of indirect taxes or import charges, a benefit exists to the extent that appropriate interest charges are not collected. Normally, a deferral of indirect taxes or import charges will be treated as a government-provided loan in the amount of the taxes deferred, according to the methodology described in § 351.505. The Secretary will use a short-term interest rate as the benchmark for tax deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for tax deferrals of more than one year.

(b) *Time of receipt of benefit—(1) Exemption or remission of taxes and import charges.* In the case of a full or partial exemption or remission of an indirect tax or import charge, the Secretary normally will consider the benefit as having been received at the time the

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recipient firm otherwise would be required to pay the indirect tax or import charge.

(2) *Deferral of taxes and import charges.* In the case of the deferral of an indirect tax or import charge of one year or less, the Secretary normally will consider the benefit as having been received on the date on which the deferred tax becomes due. In the case of a multi-year deferral, the Secretary normally will consider the benefit as having been received on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of a full or partial exemption, remission or deferral of taxes or import charges described in paragraph (a) of this section to the year in which the benefit is considered to have been received under paragraph (b) of this section.

[89 FR 101766, Dec. 16, 2024]

§ 351.522 [Reserved]

§ 351.523 Upstream subsidies.

(a) *Investigation of upstream subsidies—(1) In general.* Before investigating the existence of an upstream subsidy (see section 771A of the Act), the Secretary must have a reasonable basis to believe or suspect that all of the following elements exist:

(i) A countervailable subsidy, other than an export subsidy, is provided with respect to an input product;

(ii) One of the following conditions exists:

(A) The supplier of the input product and the producer of the subject merchandise are affiliated;

(B) The price for the subsidized input product is lower than the price that the producer of the subject merchandise otherwise would pay another seller in an arm's-length transaction for an unsubsidized input product; or

(C) The government sets the price of the input product so as to guarantee that the benefit provided with respect to the input product is passed through to producers of the subject merchandise; and

(iii) The *ad valorem* countervailable subsidy rate on the input product, multiplied by the proportion of the total production costs of the subject mer-

chandise accounted for by the input product, is equal to, or greater than, one percent.

(b) *Input product.* For purposes of this section, “input product” means any product used in the production of the subject merchandise.

(c) *Competitive benefit—(1) In general.* In evaluating whether a competitive benefit exists under section 771A(b) of the Act, the Secretary will determine whether the price for the subsidized input product is lower than the benchmark input price. For purposes of this section, the Secretary will use as a benchmark input price the following, in order of preference:

(i) The actual price paid by, or offered to, the producer of the subject merchandise for an unsubsidized input product, including an imported input product;

(ii) An average price for an unsubsidized input product, including an imported input product, based upon publicly available data;

(iii) The actual price paid by, or offered to, the producer of the subject merchandise for a subsidized input product, including an imported input product, that is adjusted to account for the countervailable subsidy;

(iv) An average price for a subsidized input product, including an imported input product, based upon publicly available data, that is adjusted to account for the countervailable subsidy; or

(v) An unadjusted price for a subsidized input product or any other surrogate price deemed appropriate by the Secretary.

For purposes of this section, such prices must be reflective of a time period that reasonably corresponds to the time of the purchase of the input.

(2) *Use of delivered prices.* The Secretary will use a delivered price whenever the Secretary uses the price of an input product under paragraph (c)(1) of this section.

(d) *Significant effect—(1) Presumptions.* In evaluating whether an upstream subsidy has a significant effect on the cost of manufacturing or producing the subject merchandise (see section 771A(a)(3) of the Act), the Secretary will multiply the *ad valorem* countervailable subsidy rate on the

input product by the proportion of the total production cost of the subject merchandise that is accounted for by the input product. If the product of that multiplication exceeds five percent, the Secretary will presume the existence of a significant effect. If the product is less than one percent, the Secretary will presume the absence of a significant effect. If the product is between one and five percent, there will be no presumption.

(2) *Rebuttal of presumptions.* A party to the proceeding may present information to rebut these presumptions. In evaluating such information, the Secretary will consider the extent to which factors other than price, such as quality differences, are important determinants of demand for the subject merchandise.

§ 351.524 Allocation of benefit to a particular time period.

Unless otherwise specified in §§ 351.504-351.523, the Secretary will allocate benefits to a particular time period in accordance with this section.

(a) *Recurring benefits.* The Secretary will allocate (expense) a recurring benefit to the year in which the benefit is received.

(b) *Non-recurring benefits—(1) In general.* The Secretary will normally allocate a non-recurring benefit to a firm over the number of years corresponding to the average useful life (“AUL”) of renewable physical assets as defined in paragraph (d)(2) of this section.

(2) *Exception.* The Secretary will normally allocate (expense) non-recurring benefits provided under a particular subsidy program to the year in which the benefits are received if the total amount approved under the subsidy program is less than 0.5 percent of relevant sales (e.g., total sales, export sales, the sales of a particular product, or the sales to a particular market) of the firm in question during the year in which the subsidy was approved.

(c) *“Recurring” versus “non-recurring” benefits—(1) Non-binding illustrative lists of recurring and non-recurring benefits.* The Secretary normally will treat the following types of subsidies as providing recurring benefits: Direct tax exemptions and deductions; exemptions and excessive rebates of indirect

taxes or import duties; provision of goods and services for less than adequate remuneration; price support payments; discounts on electricity, water, and other utilities; freight subsidies; export promotion assistance; early retirement payments; worker assistance; worker training; wage subsidies; and upstream subsidies. The Secretary normally will treat the following types of subsidies as providing non-recurring benefits: equity infusions, grants, plant closure assistance, debt forgiveness, coverage for operating losses, debt-to-equity conversions, provision of non-general infrastructure, and provision of plant and equipment.

(2) *The test for determining whether a benefit is recurring or non-recurring.* If a subsidy is not on the illustrative lists, or is not addressed elsewhere in these regulations, or if a party claims that a subsidy on the recurring list should be treated as non-recurring or a subsidy on the non-recurring list should be treated as recurring, the Secretary will consider the following criteria in determining whether the benefits from the subsidy should be considered recurring or non-recurring:

(i) Whether the subsidy is exceptional in the sense that the recipient cannot expect to receive additional subsidies under the same program on an ongoing basis from year to year;

(ii) Whether the subsidy required or received the government’s express authorization or approval (i.e., receipt of benefits is not automatic), or

(iii) Whether the subsidy was provided for, or tied to, the capital structure or capital assets of the firm.

(d) *Process for allocating non-recurring benefits over time—(1) In general.* For purposes of allocating a non-recurring benefit over time and determining the annual benefit amount that should be assigned to a particular year, the Secretary will use the following formula:

$$A_k = \frac{y/n + [y - (y/n)(k - 1)]d}{1 + d}$$

Where:

A_k = the amount of the benefit allocated to year k ,

y = the face value of the subsidy,

n = the AUL (see paragraph (d)(2) of this section),

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d = the discount rate (see paragraph (d)(3) of this section), and

k = the year of allocation, where the year of receipt = 1 and 1 ≤ k ≤ n.

(2) AUL—(i) *In general.* The Secretary will presume the allocation period for non-recurring subsidies to be the AUL of renewable physical assets for the industry concerned as listed in the Internal Revenue Service’s (“IRS”) 1977 Class Life Asset Depreciation Range System (Rev. Proc. 77-10, 1977-1, C.B. 548 (RR-38)), as updated by the Department of Treasury. The presumption will apply unless a party claims and establishes that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry under investigation, subject to the requirement, in paragraph (d)(2)(ii) of this section, that the difference between the company-specific AUL or country-wide AUL for the industry under investigation and the AUL in the IRS tables is significant. If this is the case, the Secretary will use company-specific or country-wide AULs to allocate non-recurring benefits over time (see paragraph (d)(2)(iii) of this section).

(ii) *Definition of “significant.”* For purposes of this paragraph (d), *significant* means that a party has demonstrated that the company-specific AUL or country-wide AUL for the industry differs from AUL in the IRS tables by one year or more.

(iii) *Calculation of a company-specific or country-wide AUL.* A calculation of a company-specific AUL will not be accepted by the Secretary unless it satisfies the following requirements: the company must base its depreciation on an estimate of the actual useful lives of assets and it must use straight-line depreciation or demonstrate that its calculation is not distorted through irregular or uneven additions to the pool of fixed assets. A company-specific AUL is calculated by dividing the aggregate of the annual average gross book values of the firm’s depreciable productive fixed assets by the firm’s aggregated annual charge to accumulated depreciation, for a period considered appropriate by the Secretary, subject to appropriate normalizing adjustments. A country-wide AUL for the industry under investigation will not be accept-

ed by the Secretary unless the respondent government demonstrates that it has a system in place to calculate AULs for its industries, and that this system provides a reliable representation of AUL.

(iv) *Exception.* Under certain extraordinary circumstances, the Secretary may consider whether an allocation period other than AUL is appropriate or whether the benefit stream begins at a date other than the date the subsidy was bestowed.

(3) *Selection of a discount rate.* (i) *In general.* The Secretary will select a discount rate based upon data for the year in which the government agreed to provide the subsidy. The Secretary will use as a discount rate the following, in order of preference:

(A) The cost of long-term, fixed-rate loans of the firm in question, excluding any loans that the Secretary has determined to be countervailable subsidies;

(B) The average cost of long-term, fixed-rate loans in the country in question; or

(C) A rate that the Secretary considers to be most appropriate.

(ii) *Exception for uncreditworthy firms.* In the case of a firm considered by the Secretary to be uncreditworthy (see § 351.505(a)(4)), the Secretary will use as a discount rate the interest rate described in § 351.505(a)(3)(iii).

§ 351.525 Calculation of ad valorem subsidy rate and attribution of subsidy to a product.

(a) *Calculation of ad valorem subsidy rate.* The Secretary will calculate an *ad valorem* subsidy rate by dividing the amount of the benefit allocated to the period of investigation or review by the sales value during the same period of the product or products to which the Secretary attributes the subsidy under paragraph (b) of this section. Normally, the Secretary will determine the sales value of a product on an f.o.b. (port) basis (if the product is exported) or on an f.o.b. (factory) basis (if the product is sold for domestic consumption). However, if the Secretary determines that countervailable subsidies are provided with respect to the movement of a product from the port or factory to the place of destination (e.g., freight or insurance costs are subsidized), the

Secretary may make appropriate adjustments to the sales value used in the denominator.

(b) *Attribution of subsidies*—(1) *In general.* In attributing a subsidy to one or more products, the Secretary will apply the rules set forth in paragraphs (b)(2) through (9) of this section. The Secretary may determine to limit the number of cross-owned corporations examined under this section based on record information and resource availability.

(2) *Export subsidies.* The Secretary will normally attribute an export subsidy only to products exported by a firm.

(3) *Domestic subsidies.* The Secretary will normally attribute a domestic subsidy to all products sold by a firm, including products that are exported.

(4) *Subsidies tied to a particular market.* If a subsidy is tied to sales to a particular market, the Secretary will attribute the subsidy only to products sold by the firm to that market.

(5) *Subsidies tied to a particular product*—(i) *In general.* If a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product.

(ii) *Exception.* If a subsidy is tied to production of an input product, then the Secretary will attribute the subsidy to both the input and downstream products produced by a corporation.

(6) *Corporations with cross-ownership*—(i) *In general.* The Secretary normally will attribute a subsidy to the products produced by the corporation that received the subsidy.

(ii) *Corporations producing the same product.* If two (or more) corporations with cross-ownership produce the subject merchandise, the Secretary will attribute the subsidies received by either or both corporations to the products produced by both corporations.

(iii) *Holding or parent companies.* If the firm that received a subsidy is a holding company, including a parent company with its own business operations, the Secretary will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries.

(iv) *Input producer*—(A) *In general.* If there is cross-ownership between an input producer that supplies, either directly or indirectly, a downstream pro-

ducer and production of the input product is primarily dedicated to production of the downstream products, the Secretary will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

(B) *Primarily dedicated.* In determining whether the input product is primarily dedicated to production of the downstream product, the Secretary will determine, as a threshold matter, whether the input could be used in the production of a downstream product including subject merchandise. The Secretary may also consider the following factors, which are not in hierarchical order: whether the input is a link in the overall production chain; whether the input provider's business activities are focused on providing the input to the downstream producer; whether the input is a common input used in the production of a wide variety of products and industries; whether the downstream producers in the overall production chain are the primary users of the inputs produced by the input producer; whether the inputs produced by the input producer are primarily reserved for use by the downstream producer until the downstream producer's needs are met; whether the input producer is dependent on the downstream producers for the purchases of the input product; whether the downstream producers are dependent on the input producer for their supply of the input; the coordination, nature and extent of business activities between the input producer and the downstream producers whether directly between the input producer and the downstream producers or indirectly through other cross-owned corporations; and any other factor deemed relevant by the Secretary based upon the case-specific facts.

(v) *Providers of utility products.* If there is cross-ownership between a corporation providing electricity, natural gas or other similar utility product and a producer of subject merchandise, the Secretary will attribute subsidies received by that provider to the combined sales of that provider and the sales of products sold by the producer

of subject merchandise if at least one of the following two conditions are met:

(A) A substantial percentage, normally defined as 25 percent or more, of the production of the cross-owned utility provider is provided to the producer of subject merchandise, or

(B) The producer of subject merchandise purchases a substantial percentage, normally defined as 25 percent or more, of its electricity, natural gas, or other similar utility product from the cross-owned provider.

(vi) *Transfer of subsidy between corporations with cross-ownership.* If a cross-owned corporation received a subsidy and transferred the subsidy to a producer of subject merchandise, the Secretary will only attribute the subsidy to products produced by the recipient of the transferred subsidy. When the cross-owned corporation that transferred the subsidy could fall under two or more of the paragraphs under paragraph (b)(6) of this section the transferred subsidy will be attributed solely under this paragraph.

(vii) *Cross-ownership defined.* Cross-ownership exists between two or more corporations when one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Normally, this standard will be met when there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations.

(7) *Multinational firms.* If the firm that received a subsidy has production facilities in two or more countries, the Secretary will attribute the subsidy to products produced by the firm within the country of the government that granted the subsidy. However, if it is demonstrated that the subsidy was tied to more than domestic production, the Secretary will attribute the subsidy to multinational production.

(8) *Attribution of subsidies to plants or factories.* The Secretary will not tie or attribute a subsidy on a plant- or factory-specific basis.

(9) *General standard for finding tying.* A subsidy will normally be determined to be tied to a product or market when the authority providing the subsidy was made aware of, or otherwise had

knowledge of, the intended use of the subsidy and acknowledged that intended use of the subsidy prior to, or concurrent with, the bestowal of the subsidy.

(c) *Trading companies—(1) In general.* Benefits from subsidies provided to a trading company that exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm which is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm are affiliated.

(2) *The individually examined respondent exports through trading company.* To cumulate subsidies when the trading company is not individually examined as a respondent, the Secretary will pro-rate the subsidy rate calculated for the trading company by using the ratio of the producer's total exports of subject merchandise to the United States sold through the trading company divided by producer's total exports of subject merchandise to the United States and add the resultant rate onto the producer's calculated subsidy rate.

(3) *The individually examined respondent is a trading company.* To cumulate subsidies when the trading company is individually examined as a respondent, the Secretary will pro-rate the subsidy rate calculated for the producer(s) by the ratio of the producer's sales of subject merchandise to the United States purchased or sourced by the trading company to total sales to the United States of subject merchandise from all selected producers sourced by the respondent trading company and add the resultant rates to the trading company's calculated subsidy rate.

(d) *Ad valorem subsidy rate in countries with high inflation.* For countries experiencing an inflation rate greater than 25 percent *per annum* during the relevant period, the Secretary will normally adjust the benefit amount (numerator) and the sales data (denominator) to account for the rate of inflation during the relevant period of investigation or review in calculating the *ad valorem* subsidy rate.

[63 FR 65407, Nov. 25, 1998, as amended at 89 FR 20841, Mar. 25, 2024; 89 FR 101767, Dec. 16, 2024]

§ 351.526 Subsidy extinguishment from changes in ownership.

(a) *In general.* The Secretary will normally presume that non-recurring subsidies continue to benefit a recipient in full over an allocation period determined consistent with §§ 351.507(d), 351.508(c)(1), or 351.524, notwithstanding an intervening change in ownership.

(b) *Rebutting the presumption of subsidy continuation notwithstanding a change in ownership.* (1) An interested party may rebut the presumption in paragraph (a) of this section by demonstrating with sufficient evidence that, during the allocation period, a change in ownership occurred in which the seller sold its ownership of all or substantially all of a company or its assets, retaining no control of the company or its assets, and

(i) In the case of a government-to-private sale, that the sale was an arm's-length transaction for fair market value, or

(ii) In the case of a private-to-private sale, that the sale was an arm's-length transaction, unless a party demonstrates that the sale was not for fair market value.

(2) *Arm's-length.* In determining whether the evidence presented in paragraph (b)(1) of this section demonstrates that the transaction was conducted at arm's length, the Secretary will be guided by the SAA, which defines an arm's-length transaction as a transaction negotiated between unrelated parties, each acting in its own interest, or between related parties such that the terms of the transaction are those that would exist if the transaction had been negotiated between unrelated parties.

(3) *Fair Market Value.* (i) In determining whether the evidence presented by parties pursuant to paragraph (b)(1) of this section demonstrates that the transaction was for fair market value, the Secretary will determine whether the seller, including in the case of a privatization through the government in its capacity as seller, acted in a manner consistent with the normal sales practices of private, commercial sellers in that country, taking into account evidence regarding whether the seller failed to maximize its return on what it sold.

(ii) In making the determination under paragraph (b)(3)(i) of this section, the Secretary may consider information regarding comparable benchmark prices as well as information regarding the process through which the sale was made. The following is a non-exhaustive list of specific considerations that the Secretary may find to be relevant in this regard:

(A) *Objective analysis.* Whether the seller performed or obtained an objective analysis in determining the appropriate sales price and, if so, whether it implemented the recommendations of such objective analysis for maximizing its return on the sale, including in regard to the sales price recommended in the analysis;

(B) *Artificial barriers to entry.* Whether the seller-imposed restrictions on foreign purchasers or purchasers from other industries, overly burdensome or unreasonable bidder qualification requirements, or any other restrictions that artificially suppressed the demand for, or the purchase price of, the company;

(C) *Highest bid.* Whether the seller accepted the highest bid, reflecting the full amount that the company or its assets (including the value of any subsidy benefits) were actually worth under the prevailing market conditions and whether the final purchase price was paid through monetary or close equivalent compensation; and

(D) *Committed investment.* Whether there were price discounts or other inducements in exchange for promises of additional future investment that private, commercial sellers would not normally seek (for example, retaining redundant workers or unwanted capacity) and, if so, whether such committed investment requirements were a barrier to entry or in any way distorted the value that bidders were willing to pay for what was being sold.

(4) *Deadline to rebut the presumption under paragraph (b)(1) of this section.* The Secretary will normally not consider information submitted by a respondent or government on the record to be sufficient to rebut the presumption of subsidy continuation under paragraph (b)(1) of this section unless that submitted information is timely

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filed as part of the respondent's or government's initial questionnaire response.

(5) *Market distortion.* Information presented under paragraphs (b)(2) and (3) of this section notwithstanding, the Secretary will not find the presumption in paragraph (a) of this section to be rebutted if an interested party has demonstrated that, at the time of the change in ownership, the broader market conditions necessary for the transaction price to accurately reflect the subsidy benefit were not present or were severely distorted by government action or inaction such that the transaction price was meaningfully different from what it would otherwise have been absent the distortive government action or inaction. In assessing such claims, the Secretary may consider, among other things, the following factors:

(i) *Fundamental conditions.* Whether the fundamental requirements for a properly functioning market are sufficiently present in the economy in general as well as in the particular industry or sector, including, for example, free interplay of supply and demand, broad-based and equal access to information, sufficient safeguards against collusive behavior, and effective operation of the rule of law; and

(ii) *Legal and fiscal incentives.* Whether the government has used the prerogatives of government in a special or targeted way that makes possible or otherwise significantly distorts the terms of a change in ownership in a way that a private seller could not. Examples of such incentives include, but are not limited to, the following:

(A) Special tax or duty rates that make the sale more attractive to potential purchasers;

(B) Regulatory exemptions particular to the privatization (or to privatizations generally) affecting worker retention or environmental remediation; or

(C) Subsidization or support of other companies to an extent that severely distorts the normal market signals regarding company and asset values in the industry in question.

(c) *Subsidy benefit extinguishment—(1) In general.* If the Secretary determines that any evidence presented by inter-

ested parties under paragraph (b) of this section rebuts the presumption under paragraph (a) of this section, the full amount of pre-transaction subsidy benefits, including the benefit of any concurrent subsidy meeting the criteria in paragraph (c)(2) of this section, will be found to be extinguished and therefore not countervailable. Absent such a finding, the Secretary will not find that a change in ownership extinguishes subsidy benefits.

(2) *Concurrent subsidies.* For purposes of paragraph (c)(1) of this section, concurrent subsidies are those subsidies given to facilitate or encourage or that are otherwise bestowed concurrent with a change in ownership. The Secretary will normally consider the value of a concurrent subsidy to be fully reflected in the fair market value price of an arm's-length change in ownership and, therefore, to be fully extinguished in such a transaction under paragraph (c)(1) of this section, if the following criteria are met:

(i) The nature and value of the concurrent subsidies are fully transparent to all potential bidders and, therefore, reflected in the final bid values of the potential bidders,

(ii) The concurrent subsidies are bestowed prior to the sale, and

(iii) There is no evidence otherwise on the record demonstrating that the concurrent subsidies are not fully reflected in the transaction price.

[89 FR 101768, Dec. 16, 2024]

§ 351.527 [Reserved]

§ 351.528 Exchanges of undervalued currencies.

(a) *Currency undervaluation—(1) In general.* The Secretary normally will consider whether a benefit is conferred from the exchange of United States dollars for the currency of a country under review or investigation under a unified exchange rate system only if that country's currency is undervalued during the relevant period. In determining whether a country's currency is undervalued, the Secretary normally will take into account the gap between the country's real effective exchange rate (REER) and the real effective exchange rate that achieves an external

balance over the medium term that reflects appropriate policies (equilibrium REER).

(2) *Government action.* The Secretary normally will make an affirmative finding under paragraph (a)(1) of this section only if there has been government action on the exchange rate that contributes to an undervaluation of the currency. In assessing whether there has been such government action, the Secretary will not normally include monetary and related credit policy of an independent central bank or monetary authority. The Secretary may also consider the government's degree of transparency regarding actions that could alter the exchange rate.

(b) *Benefit*—(1) *In general.* Where the Secretary has made an affirmative finding under paragraph (a)(1) of this section, the Secretary normally will determine the existence of a benefit after examining the difference between:

(i) The nominal, bilateral United States dollar rate consistent with the equilibrium REER; and

(ii) The actual nominal, bilateral United States dollar rate during the relevant time period, taking into account any information regarding the impact of government action on the exchange rate.

(2) *Amount of benefit.* Where there is a difference under paragraph (b)(1) of this section, the amount of the benefit from a currency exchange normally will be based on the difference between the amount of currency the firm received in exchange for United States dollars and the amount of currency that firm would have received absent the difference referred to in paragraph (b)(1) of this section.

(c) *Information sources.* In applying this section, the Secretary will request that the Secretary of the Treasury provide its evaluation and conclusion as to the determinations under paragraphs (a) and (b)(1) of this section.

[85 FR 6043, Feb. 4, 2020]

§ 351.529 Certain fees, fines, and penalties.

(a) *Financial contribution.* When determining if a fee, fine, or penalty that is otherwise due, has been forgone or not collected, within the meaning of sec-

tion 771(5)(D)(ii) of the Act, the Secretary may conclude that a financial contribution exists if information on the record demonstrates that payment was otherwise required and was not made, in full or in part. In making such a determination, the Secretary will not be required to consider whether the government took efforts to seek payment or grant deferral, or otherwise acknowledged nonpayment, of the fee, fine, or penalty.

(b) *Benefit.* If the Secretary determines that the government has exempted or remitted in part or in full, a fee, fine, or penalty under paragraph (a) of this section, a benefit exists to the extent that the fee, fine, or penalty paid by a party is less than if the government had not exempted or remitted that fee, fine, or penalty. Further, if the government is determined to have deferred the payment of the fee, fine, or penalty, in part or in full, a benefit exists to the extent that appropriate interest charges are not collected. Normally, a deferral of payment of fees, fines, or penalties will be treated as a government provided loan in the amount of the payments deferred, according to the methodology described in § 351.505.

[89 FR 20841, Mar. 25, 2024]

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

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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 benefiting 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-undercut-

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ting 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.

Subpart G—Applicability Dates

§ 351.701 Applicability dates.

The regulations contained in this part 351 apply to all administrative reviews initiated on the basis of requests made on or after the first day of July, 1997, to all investigations and other segments of proceedings initiated on the basis of petitions filed or requests made after June 18, 1997 and to segments of proceedings self-initiated by the Department after June 18, 1997. Segments of proceedings to which part 351 do not apply will continue to be governed by the regulations in effect on the date the petitions were filed or requests were made for those segments, to the extent that those regulations were not invalidated by the URAA or replaced by the interim final regulations published on May 11, 1995 (60 FR 25130 (1995)). For segments of proceedings initiated on the basis of petitions filed or requests made after January 1, 1995, but before part 351 applies, part 351 will serve as a restatement of the Department's interpretation of the requirements of the Act as amended by the URAA.

§ 351.702 Applicability dates for countervailing duty regulations.

(a) Notwithstanding §351.701, the regulations in subpart E of this part apply to:

(1) All CVD investigations initiated on the basis of petitions filed after December 28, 1998;

(2) All CVD administrative reviews initiated on the basis of requests filed on or after the first day of January 1999; and

(3) To all segments of CVD proceedings self-initiated by the Department after December 28, 1998.

(b) Segments of CVD proceedings to which subpart E of this part does not apply will continue to be guided by the Department's previous methodology (in particular, as described in the 1989 Proposed Regulations), except to the extent that the previous methodology

was invalidated by the URAA, in which case the Secretary will treat subpart E of this part as a restatement of the Department's interpretation of the requirements of the Act as amended by the URAA.

[63 FR 65417, Nov. 25, 1998]

ANNEX I TO PART 351—DEADLINES FOR PARTIES IN COUNTERVAILING INVESTIGATIONS

Day ¹	Event	Regulation
0 days	Initiation.	
20 days	Submission of factual information to measure adequacy of remuneration.	351.301(c)(3)(i)(B) or (C) (45 days before the scheduled date of preliminary determination, or the Secretary may issue an alternative schedule).
30 days	Rebuttal, clarification, or correction of factual information to measure adequacy of remuneration.	351.301(c)(3)(iv) (10 days after filing of factual information to measure adequacy of remuneration).
31 days ²	Notification of difficulty in responding to questionnaire.	351.301(c)(1)(iii) (14 days after date of receipt of questionnaire).
35 days	Submission of factual information not directly responsive to or relating to that described in 351.102(b)(21)(i)–(iv).	351.301(c)(5) (The earlier of 30 days before the scheduled date of preliminary determination or 14 days before verification).
40 days	Request for postponement by petitioner	351.205(e) (25 days or more before the scheduled date of preliminary determination).
45 days	Allegation of critical circumstances before preliminary determination.	351.206(c)(2)(i) (20 days before the scheduled date of preliminary determination).
0–47 days	Application for an administrative protective order.	351.305(b)(3) (before submission of the first response to questionnaire; where justified, may be filed up to the date on which the case briefs are due).
47 days	Questionnaire responses	351.301(c)(1)(i) (30 days from date of receipt of questionnaire).
65 days (May be postponed to 130 days).	Preliminary determination	351.205(b)(1) and (2) (65 days after initiation of the investigation, but may be extended to 130 days after initiation of investigation).
72 days	Submission of proposed suspension agreement.	351.208(f)(1)(i)(B) (7 days after preliminary determination).
75 days	Submission of ministerial error comments after preliminary determination.	351.224(c)(2) (5 days after the earlier of the release of disclosure documents or a disclosure meeting).
77 days ³	Request to align a CVD investigation with a concurrent AD investigation.	351.210(i) (5 days after date of publication of preliminary determination).
102 days	Request for a hearing	351.310(c) (30 days after date of publication of preliminary determination).
119 days	Allegation of critical circumstances before final determination.	351.206(e) (21 days or more before scheduled date of final determination).
122 days	Requests for closed hearing Sessions	351.310(f) (No later than the date the case briefs are due).
122 days	Submission of briefs	351.309(c)(1)(i) (50 days after date of publication of preliminary determination).
125 days	Allegation of upstream subsidies	351.301(c)(2)(iv)(C) (60 days after the preliminary determination).
127 days	Submission of rebuttal briefs	351.309(d)(1) (5 days after deadline for filing case brief).
129 days	Hearing	351.310(d)(1) (2 days after submission of rebuttal briefs).
147 days ⁴ (May be postponed to 237 days).	Final determination	351.210(b)(1) and (3) (75 days after preliminary determination, but may be postponed to 165 days after preliminary determination if Secretary investigates an upstream subsidy allegation and concludes additional time is needed).
150 days	Submission of ministerial error comments after final determination.	351.224(c)(2) (5 days after the earlier of the release of disclosure documents or a disclosure meeting).
155 days	Submission of replies to ministerial error comments.	351.224(c)(3) (5 days after filing of ministerial error comments).

Day ¹	Event	Regulation
199–289 days	Order issued	351.211(b) (Not later than 7 days after receipt of notice of an affirmative final injury determination by the U.S. International Trade Commission).

¹ indicates the number of days from the date of initiation. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.
² Assumes that the Department sends out the questionnaire within 10 days of the initiation and allows 7 days for receipt of the questionnaire from the date on which it was transmitted.
³ Assumes that the Preliminary Determination is published 7 days after issuance.
⁴ Assumes that the Preliminary Determination is published 7 days after issuance.

[90 FR 14201, Mar. 31, 2025]

ANNEX II TO PART 351—DEADLINES FOR PARTIES IN COUNTERVAILING ADMINISTRATIVE REVIEWS

Day ¹	Event	Regulation
0 days	Request for review	351.213(b)(1) (Last day of the anniversary month).
30 days	Publication of initiation notice	351.221(c)(1)(i) (End of month following the anniversary month).
66 days ²	Notification of difficulty in responding to questionnaire.	351.301(c)(1)(iii) (14 days after date of receipt of questionnaire).
0–75 days	Application for an administrative protective order.	351.305(b)(3) (before submission of first response; where justified, may be filed up to the date on which the case briefs are due).
90 days ³	Questionnaire responses	351.301(c)(1)(i) (At least 30 days after date of receipt of questionnaire).
104 days	Submission of factual information to rebut, clarify, or correct questionnaire response.	351.301(c)(1)(v) (14 days after questionnaire response).
110 days	Countervailable subsidy allegation	351.301(c)(2)(iv)(B) (20 days after filing of all responses to questionnaire).
120 days	Withdrawal of request for review	351.213(d)(1) (90 days after date of publication of initiation).
130 days	Request for verification	351.307(b)(1)(v)(A) (100 days after date of publication of initiation).
185 days	Submission of factual information to measure adequacy of remuneration.	351.301(c)(3)(ii)(A) or (B) (60 days before scheduled date of preliminary results, or the Secretary may issue an alternative schedule).
195 days	Rebuttal, clarification, or correction of factual information to measure adequacy of remuneration.	351.301(c)(3)(iv) (10 days after filing of factual information to measure adequacy of remuneration).
215 days	Submission of factual information not directly responsive to or relating to that described in 351.102(b)(21)(i)–(iv).	351.301(c)(5) (The earlier of 30 days before the scheduled date of preliminary results or 14 days before verification).
245 days (May be extended to 365 days).	Preliminary results of review	351.213(h)(1) and (2) (245 days after the last day of the anniversary month, but may be extended to 365 days after the last day of the anniversary).
282 days ⁴	Request for a hearing	351.310(c) (30 days after date of publication of preliminary results).
282 days	Request for a closed hearing session	351.310(f) (date on which the case briefs are due).
282 days	Submission of briefs	351.309(c)(1)(ii) (30 days after date of publication of preliminary results).
287 days	Submission of rebuttal briefs	351.309(d)(1) (5 days after deadline for filing case briefs).
289 days	Hearing	351.310(d)(1) (2 days after submission of rebuttal briefs).
372 days ⁵ (May be extended to 552 days).	Final results of review	351.213(h)(1) and (2) (120 days after date of publication of preliminary results, but may be extended to 180 days after date of publication of preliminary results).
382 days	Submission of ministerial error comments	351.224(c)(2) (5 days after the earlier of the release of disclosure documents or the disclosure meeting).
387 days	Replies to ministerial error comments	351.224(c)(3) (5 days after filing of comments).

¹ Indicates the number of days from the end of the anniversary month. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.
² Assumes that the Department sends out the questionnaire 45 days after the last day of the anniversary month and allows 7 days for receipt of the questionnaire from the date on which it was transmitted.

³ Assumes that the Department sends out the questionnaire on day 45 and the response is due 45 days later.
⁴ Assumes that the Preliminary Results are published 7 days after issuance.
⁵ Assumes that the Preliminary Results are published 7 days after issuance.

[90 FR 14201, Mar. 31, 2025]

ANNEX III TO PART 351—DEADLINES FOR PARTIES IN ANTIDUMPING INVESTIGATIONS

Day ¹	Event	Regulation
0 days	Initiation.	
21 days	Application/certification for separate rate (nonmarket economy).	351.108(d)(1) (21 days after publication).
50 days	Country-wide cost allegation	351.301(c)(2)(ii)(A) (20 days after date on which questionnaire was transmitted).
0–67 days	Application for an administrative protective order.	351.305(b)(3) (before submission of the first response to the questionnaire; where justified, may be filed up to the date on which the case briefs are due).
51 days ²	Notification of difficulty in responding to questionnaire.	351.301(c)(1)(iii) (Within 14 days after date of receipt of questionnaire).
67 days	Questionnaire responses	351.301(c)(1)(i) (At least 30 days after date of receipt of questionnaire; where justified, may be filed up to the date on which the case briefs are due).
77 days	Viability arguments and certain multinational corporation allegations.	351.301(c)(2)(i) (10 days after response to relevant section of the questionnaire was filed) and 351.404(g)(1).
80 days	Submission of publicly available information to value factors (nonmarket economy).	351.301(c)(3)(i)(A) or (C) (60 days before scheduled date of preliminary determination, or the Secretary may issue an alternative schedule)).
87 days	Company-specific cost allegations	351.301(c)(2)(ii)(A) (within 20 days after response to relevant section of questionnaire was filed).
87 days	Major input cost allegations	351.301(c)(2)(iii) (within 20 days after response to relevant section of questionnaire was filed).
110 days	Submission of other factual information not responsive to or relating to 351.102(b)(21)(i)–(iv).	351.301(c)(5) (The earlier of 30 days before scheduled date of preliminary determination or 14 days before verification).
115 days	Request for postponement by petitioner	351.205(e) (25 days or more before scheduled date of preliminary determination).
120 days	Allegation of critical circumstances before preliminary determination.	351.206(c)(2)(i) (20 days before scheduled date of preliminary determination).
140 days (May be postponed to 190 days).	Preliminary determination	351.205(b)(1) and (2) (140 days after the publication of initiation, but may be extended to 190 days after the publication of initiation).
150 days	Submission of ministerial error comments	351.224(c)(2) (5 days after release of disclosure documents or holding of a disclosure meeting).
155 days	Submission of proposed suspension agreement.	351.208(f)(1)(i)(A) (15 days after issuance of preliminary determination).
177 days ³	Request for a hearing	351.310(c) (30 days after date of publication of preliminary determination).
194 days	Allegation of critical circumstance allegation before final determination.	351.206(e) (21 days before scheduled date of final determination).
197 days (May be changed)	Request for closed hearing sessions	351.310(f) (No later than the date the case briefs are due).
197 days (May be changed)	Submission of briefs	351.309(c)(1)(i) (50 days after date of publication of preliminary determination).
202 days	Submission of rebuttal briefs	351.309(d)(1) (5 days after deadline for filing case briefs).
204 days	Hearing	351.310(d)(1) (2 days after submission of rebuttal briefs).
215 days	Request for postponement of the final determination.	351.210(e) (Submitted within the scheduled date of the final determination).
222 days ⁴ (May be postponed to 282 days).	Final determination	351.210(b)(1) and (2) (75 days after the date of publication of preliminary determination, but may be postponed to 135 days after the date of publication of preliminary determination).
232 days	Submission ministerial error comments	351.224(c)(2) (5 days after release of disclosure documents or holding of a disclosure meeting).
237 days	Replies to ministerial error comments	351.224(c)(3) (5 days after filing of comments).

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Day ¹	Event	Regulation
274–334 days	Order issued	351.211(b) (Not later than 7 days after receipt of notice of an affirmative final injury determination by the U.S. International Trade Commission).

¹ Indicates the number of days from the date of initiation. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.
² Assumes that the Department sends out the questionnaire 5 days after the U.S. International Trade Commission vote and allows 7 days for receipt of the questionnaire from the date on which it was transmitted.
³ Assumes that the Preliminary Determination is published 7 days after issuance.
⁴ Assumes that the Preliminary Determination is published 7 days after issuance.

[90 FR 14201, Mar. 31, 2025]

ANNEX IV TO PART 351—DEADLINES FOR PARTIES IN ANTIDUMPING ADMINISTRATIVE REVIEWS

Day ¹	Event	Regulation
0 days	Request for review	351.213(b)(1) (During the anniversary month).
30 days	Publication of initiation	351.221(c)(1)(i) (End of month following the anniversary month).
0–90 days	Application for an administrative protective order.	351.305(b)(3) (Before submission of first response to questionnaire; where justified, may be filed up to the date on which the case briefs are due).
44 days	Application/certification for separate rate (non-market economy).	351.108(d)(2) and (3) (14 days after publication of initiation).
60 days	Request to examine absorption of duties	351.213(j)(1) (30 days after date of publication of initiation).
66 days ²	Notification of difficulty in responding to questionnaire.	351.301(c)(1)(iii) (14 days after date of receipt of questionnaire).
85 days	Viability arguments and certain multinational corporation allegations.	351.301(c)(2)(i) (10 days after relevant section is filed) and 351.404(g)(1).
90 days ³	Questionnaire responses	351.301(c)(1)(i) (At least 30 days after date of receipt of questionnaire).
110 days	Company-specific cost allegations	351.301(c)(2)(ii)(B) (20 days after relevant section is filed).
110 days	Major input cost allegations	351.301(c)(2)(iii) (20 days after relevant section is filed).
120 days	Withdrawal of request for review	351.213(d)(1) (90 days after date of publication of initiation).
130 days	Request for verification	351.307(b)(1)(v)(A) (100 days after date of publication of initiation).
185 days	Submission of publicly available information to value factors (nonmarket economy).	351.301(c)(3)(ii)(A) and (B) (60 days before the scheduled date of preliminary results, or the Secretary may issue an alternative schedule).
215 days	Submission of other factual information not responsive to or relating to 351.102(b)(21)(i)–(iv).	351.301(c)(5) (The earlier of 30 days before the scheduled date of preliminary results or 14 days before verification).
245 days (May be extended to 365 days).	Preliminary results of review	351.213(h)(1) and (2) (245 days after the last day of the anniversary month, but may be extended to 365 days after the last day of the anniversary month).
282 days	Request for a hearing	351.310(c) (30 days after date of publication of preliminary results).
282 days	Request for closed hearing sessions	351.310(f) (No later than the date the case briefs are due).
282 days	Submission of briefs	351.309(c)(1)(ii) (30 days after date of publication of preliminary results).
287 days	Submission of rebuttal briefs	351.309(d)(1) (5 days after deadline for filing case briefs).
289 days	Hearing	351.310(d)(1) (2 days after submission of rebuttal briefs).
372 days ⁴ (May be extended to 552 days).	Final results of review	351.213(h)(1) and (2) (120 days after the date of publication of preliminary results, but may be extended to 180 days after the date of publication of the preliminary results).
382 days	Ministerial error comments	351.224(c)(2) (5 days after release of disclosure documents).

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Day ¹	Event	Regulation
387 days	Replies to ministerial error comments	351.224(c)(3) (5 days after filing of comments).

¹ Indicates the number of days from the end of the anniversary month. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.

² Assumes that the Department sends out the questionnaire 45 days after the last day of the anniversary month and allows 7 days for receipt of the questionnaire from the date on which it was transmitted.

³ Assumes that the Department sends out the questionnaire on day 45 and the response is due 45 days later.

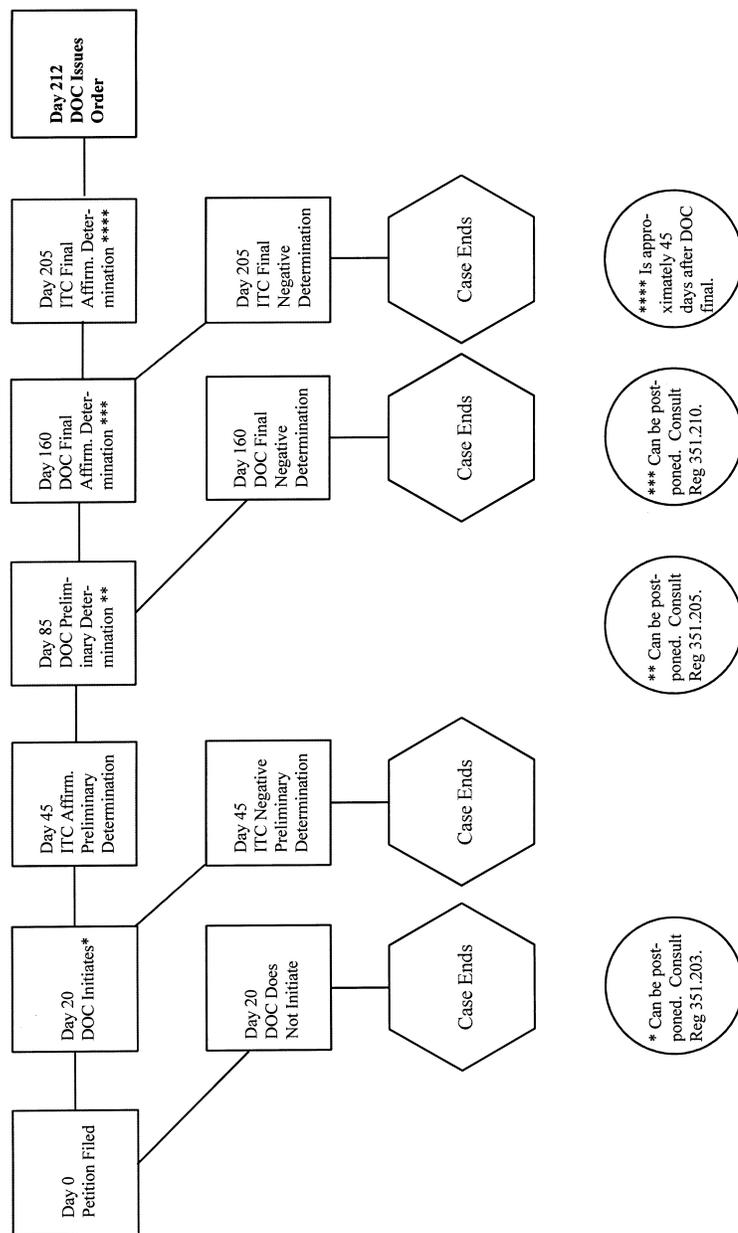
⁴ Assumes that the Preliminary Results are published 7 days after issuance.

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ANNEX V TO PART 351 [RESERVED]

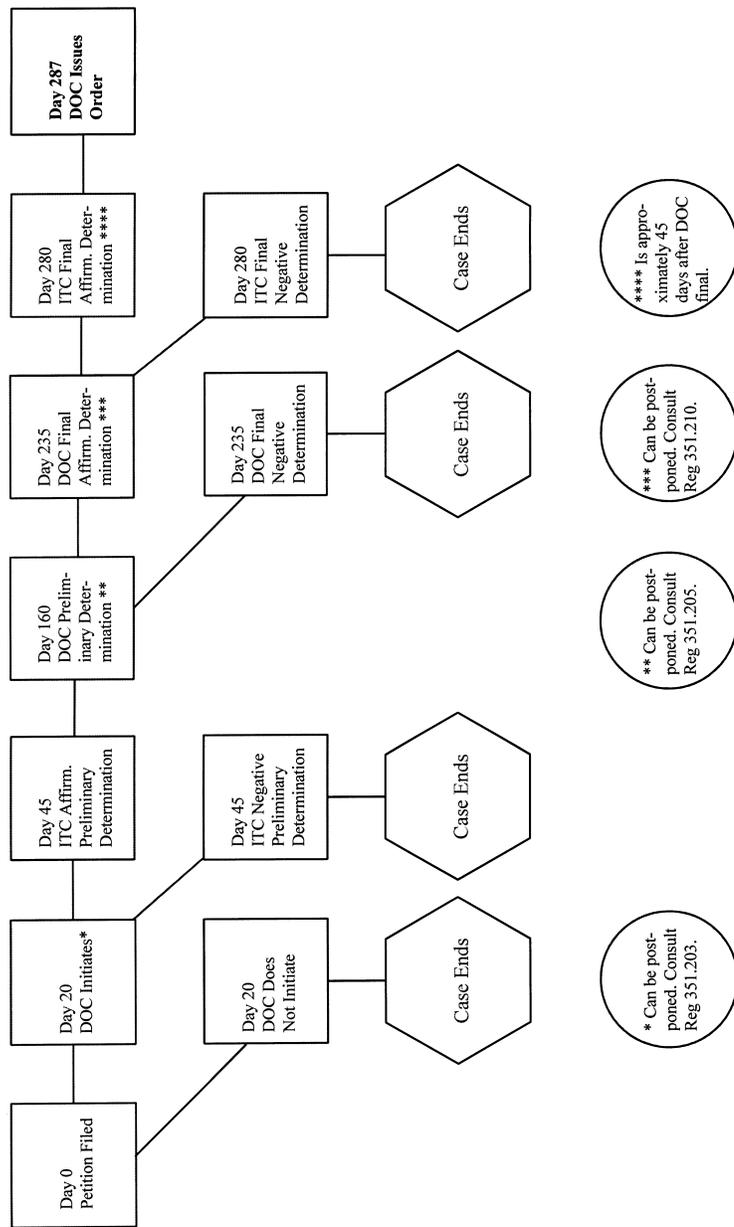
ANNEX VI TO PART 351—COUNTERVAILING INVESTIGATIONS TIMELINE

Countervailing Investigations Timeline



ANNEX VII TO PART 351—ANTIDUMPING INVESTIGATIONS TIMELINE

Antidumping Investigations Timeline



ANNEX VIII–A TO PART 351—DEADLINES FOR PARTIES IN 90-DAY SUNSET REVIEWS

Day ¹	Event	Regulation
0 days	Initiation	351.218(c).
15 days	Filing of Notice of Intent to Participate by domestic interested parties.	351.218(d)(1)(i) (not later than 15 days after the date of publication of the Notice of Initiation).
20 days	Notification to the ITC that no domestic interested party(s) has responded to the Notice of Initiation.	351.218(d)(1)(iii)(B)(2) (normally not later than 20 days after the date of publication of the Notice of Initiation).
30 days	Filing of substantive response to the Notice of Initiation by all interested parties; industrial users; and consumers.	351.218(d)(3)(i) and 351.218(d)(3)(vi) (not later than 30 days after the date of publication of the Notice of Initiation).
35 days	Filing of rebuttal to substantive response to the Notice of Initiation.	351.218(d)(4) (not later than 5 days after the substantive response is filed with the Department).
40 days	Notification to the ITC that no domestic interested party(s) provided adequate response to the Notice of Initiation.	351.218(e)(1)(i)(C)(2) (normally not later than 40 days after the date of publication of the Notice of Initiation).
90 days	Final determination revoking an order or terminating a suspended investigation where no domestic interested party(s) responds to the Notice of Initiation.	351.218(d)(1)(iii)(B)(3) and 351.222(i)(1)(i) (normally not later than 90 days after the date of publication of the notice of Initiation).

¹ Indicates the number of days from the date of publication of the Notice of Initiation. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.

[89 FR 103637, Dec. 19, 2024]

ANNEX VIII–B TO PART 351—DEADLINES FOR PARTIES IN EXPEDITED SUNSET REVIEWS

Day ¹	Event	Regulation
0 days	Initiation	351.218(c).
15 days	Filing of Notice of Intent to Participate by domestic interested parties.	351.218(d)(1)(i) (not later than 15 days after the date of publication of the Notice of Initiation).
30 days	Filing of Statement of Waiver by respondent interested parties.	351.218(d)(2)(i) (not later than 30 days after the date of publication of the Notice of Initiation).
30 days	Filing of a complete substantive response to the Notice of Initiation by all interested parties and industrial users and consumers.	351.218(d)(3)(i) and 351.218(d)(3)(vi) (not later than 30 days after the date of publication of the Notice of Initiation).
35 days	Filing of rebuttal to substantive response to the Notice of Initiation.	351.218(d)(4) (not later than 5 days after the substantive response is filed with the Department).
50 days	Written notification to the ITC that respondent interested parties provided inadequate response to the Notice of Initiation.	351.218(e)(1)(ii)(C)(1) (normally not later than 50 days after the date of publication of the Notice of Initiation).
70 days	Comments on adequacy of response and appropriateness of expedited sunset review.	351.309(e)(ii) (not later than 70 days after the date of publication of the Notice of Initiation).
120 days	Final results of expedited sunset review where respondent interested parties, and foreign governments, provide inadequate response to the Notice of Initiation.	351.218(e)(1)(ii)(B) and 351.218(e)(1)(ii)(C)(2) (not later than 120 days after the date of publication of the Notice of Initiation).

¹ Indicates the number of days from the date of publication of the Notice of Initiation. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.

[89 FR 103637, Dec. 19, 2024]

ANNEX VIII–C TO PART 351—DEADLINES FOR PARTIES IN FULL SUNSET REVIEWS

Day ¹	Event	Regulation
0 days	Initiation.	
15 days	Filing of Notice of Intent to Participate by domestic interested parties.	351.218(d)(1)(i) (not later than 15 days after the date of publication of the Notice of Initiation).
30 days	Filing of Statement of Waiver by respondent interested parties.	351.218(d)(2)(i) (not later than 30 days after the date of publication of the Notice of Initiation).
30 days	Filing of substantive response to the Notice of Initiation by all interested parties; industrial users; and consumers.	351.218(d)(3)(i) and 351.218(d)(3)(vi) (not later than 30 days after the date of publication of the Notice of Initiation).
35 days	Filing of rebuttal to substantive response to the Notice of Initiation.	351.218(d)(4) (not later than 5 days after the substantive response is filed with the Department).
110 days	Preliminary results of full sunset review	351.218(f)(1) (normally not later than 110 days after the date of publication of the Notice of Initiation).

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Day ¹	Event	Regulation
120 days	Verification in a full sunset review, where needed ..	351.218(f)(2)(ii) (normally an approximate of 120 days after the date of publication of the Notice of Initiation).
160 days	Filing of case brief in full sunset review	351.309(c)(1)(i) (50 days after the date of publication of the preliminary results of full sunset review).
165 days	Filing of rebuttal brief in full sunset review	351.309(d)(1) (5 days after the time limit for filing a case brief, unless the Secretary alters the time limit).
167 days	Public hearing in full sunset review if requested	351.310(d)(i) (ordinarily 2 days after the time limit for filing a rebuttal brief, unless the Secretary alters the date).
240 days	Final results of full sunset review	351.218(f)(3)(i) (normally not later than 240 days after the date of publication of the Notice of Initiation).
330 days (may be extended to 420 days).	Final results of full sunset review if fully extended ..	351.218(f)(3)(ii) (if full sunset review is extraordinarily complicated, period for issuing final results, but may be extended by not more than 90 days).

¹ Indicates the number of days from the date of publication of the Notice of Initiation. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.

[89 FR 103637, Dec. 19, 2024]

ANNEX IX TO PART 351—DEADLINES FOR PARTIES IN SCOPE RULINGS

Day ¹	Event	Regulation
0 days	Secretary's self-initiation or filing of scope rule application.	351.225(b)/(c)(1).
10 days	Comments on adequacy of the request by non-applicant.	351.225(c)(3) (10 days after applicant filed application under (c)(1)).
24 days	Comments and factual information Submission of rebuttal addressing self-initiation.	351.225(f)(1) (14 days after comments were filed under (b)).
30 days	Secretary's determination whether to initiate inquiry	351.225(d)(1) (30 days after application was filed or response to questionnaire is filed).
30 days	Submission of comments and factual information addressing self-initiation.	351.225(f)(1) (30 days after Secretary's self-initiated scope inquiry under (b)).
31 days ²	Issuance of preliminary scope ruling	351.225(g).
45 days ³	Issuance of questionnaires	351.225(f)(3).
45 days	Scope comments under (g)	351.225(f)(4) (14 days after issuance of preliminary scope ruling).
52 days	Rebuttal comments under (g)	351.225(f)(4) (7 days after scope comments were filed under (f)(4)).
60 days	Comments and factual information Submission of rebuttal by non-applicant.	351.225(f)(2) (30 days after initiation under (d)(1)).
74 days	Comments and factual information Submission of rebuttal by applicant.	351.225(f)(2) (14 days after rebuttal by non-applicant was filed under (d)(1)).
90 days	Comments and factual information Response to questionnaires.	351.225(f)(3) (specified by the Secretary).
104 days	Comments and factual information Rebuttal to questionnaire response.	351.225(f)(3) (14 days after questionnaire response was filed by original submitter).
111 days	Comments and factual information Rebuttal to questionnaire response's rebuttal.	351.225(f)(3) (7 days after rebuttal to questionnaire response was filed).
120 days (may be extended to 300 days).	Issuance of final scope ruling	351.225(e)(1) (120 days after initiation under (b) or (d), but may be extended to 300 days after initiation).
	Publication of final scope rulings	351.225(o) (quarterly).
	Publication of scope clarifications	351.225(q).

¹ Indicates the number of days from the date of initiation. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.

² Assumes the Secretary did not issue a preliminary scope ruling concurrently with the initiation of the scope inquiry.

³ Assumes that the Department sends out the questionnaire on day 45 and the response is due 45 days later.

[89 FR 103639, Dec. 19, 2024]

ANNEX X TO PART 351—DEADLINES FOR PARTIES IN CIRCUMVENTION INQUIRIES

Day ¹	Event	Regulation
0 days	Circumvention inquiry request or self-initiation	351.226(b).

Day ¹	Event	Regulation
10 days	Comments and information on the adequacy of the request.	351.226(c)(3) (10 days after the circumvention inquiry request is filed).
15 days	Rebuttal comments	351.226(c)(3) (5 days after new factual information in support of adequacy comments is filed).
30 days	Initiation determination of circumvention inquiry based on a request.	351.226(d)(1) (30 days after the circumvention inquiry request is filed unless Secretary finds it is impracticable or seeks clarification).
30 days	Comments and information addressing self-initiation.	351.226(f)(1) (30 days after a circumvention inquiry is self-initiated).
30 days	Scope ruling application rebuttal comments	351.226(f)(2) (30 days after a circumvention inquiry is initiated under paragraph (d)(1)).
44 days	Applicant rebuttal comments (self-initiated inquiry)	351.226(f)(1) (14 days after scope ruling application rebuttal comments are filed).
44 days	Applicant rebuttal comments (inquiry based on a request).	351.226(f)(2) (14 days after scope ruling application rebuttal comments are filed).
157 days ²	Preliminary determination of self-initiated circumvention inquiry.	351.226(e)(1) (150 days after the notice of self-initiation is published) (May be extended by no more than 90 days).
187 days ³	Preliminary determination of circumvention inquiry based on a request.	351.226(e)(1) (150 days after the notice of initiation is published) (May be extended by no more than 90 days).
171 days	Preliminary determination comments in self-initiated circumvention inquiry.	351.226(f)(4) (14 days after the issuance of the preliminary determination).
201 days	Preliminary determination comments in circumvention inquiry based on a request.	351.226(f)(4) (14 days after the issuance of the preliminary determination).
178 days	Preliminary determination rebuttal comments in self-initiated circumvention inquiry.	351.226(f)(4) (7 days after the issuance of the preliminary determination).
208 days	Preliminary determination rebuttal comments in circumvention inquiry based on a request.	351.226(f)(4) (7 days after the issuance of the preliminary determination).
300 days or 365 days.	Final determination of self-initiated circumvention inquiry.	351.226(e)(2) (300 days after the notice of initiation is published) (May be extended by no more than 65 days).
330 days or 395 days.	Final determination of circumvention inquiry based on a request.	351.226(e)(2) (300 days after the notice of initiation is published) (May be extended by no more than 65 days).

¹ Indicates the number of days from Initiation. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.

² Assumes that the Preliminary Results are published 7 days after issuance.

³ Assumes that the Preliminary Results are published 7 days after issuance.

[90 FR 14204, Mar. 31, 2025]

ANNEX XI-A TO PART 351—DEADLINES FOR COVERED MERCHANDISE REFERRAL WITHOUT PRELIMINARY DETERMINATION

Day ¹	Event	Regulation
0 days	Initiation	351.227(b)(1) (within 20 days after acknowledging receipt of a covered merchandise referral from U.S. Customs and Border Protection).
30 days	Filing of comments and factual information to the Notice of Initiation by interested parties.	351.227(d)(1) (within 30 days after publication of the notice of an initiation of a covered merchandise).
44 days	Filing of rebuttal comments and factual information to the Notice of Initiation by other interested parties.	351.227(d)(1) (within 14 days after filing of comments and factual information by interested parties).
X ¹ days	Questionnaire submission received by Commerce	351.227(d)(2) (after the initiation of a covered merchandise inquiry).
X + 14 days	Filing of rebuttal, clarification, or correction of factual comment by an interested party other than the original submitter to the questionnaire response.	351.227(d)(2) (within 14 days after a questionnaire response has been filed with the Secretary by the original submitter).
X + 21 days	Filing of rebuttal, clarification, or correction comment to the rebuttal, clarification, or correction of factual comment of the interested party by the original submitter.	351.227(d)(2) (within 7 days of the filing of the rebuttal comment by interested party).

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Day ¹	Event	Regulation
120 days	Final covered merchandise determination	351.227(c)(1) (within 120 days from the date of publication of the Notice of Initiation, unless (1) extended by no more than 150 days under 351.227(c)(2), or (2) aligned with other segments under 351.227(c)(3)).

¹ Indicates the approximate number of days from the date of publication of the Notice of Initiation. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.

² X represents the date a questionnaire is received by Commerce.

[89 FR 103640, Dec. 19, 2024]

ANNEX IX-B TO PART 351—DEADLINES FOR COVERED MERCHANDISE REFERRAL WITH PRELIMINARY DETERMINATION

Day ¹	Event	Regulation
0	Initiation ²	351.227(b)(1) (within 20 days after acknowledging receipt of a covered merchandise referral from U.S. Customs and Border Protection).
30	Filing of comments and factual information to the Notice of Initiation by interested parties.	351.227(d)(1) (within 30 days after publication of the notice of an initiation of a covered merchandise).
44	Filing of rebuttal comments and factual information to the Notice of Initiation by other interested parties.	351.227(d)(1) (within 14 days after filing of comments and factual information by interested parties).
X ³	Questionnaire submission received by Commerce	351.227(d)(2) (after the initiation of a covered merchandise inquiry).
X + 14	Filing of rebuttal, clarification, or correction of factual comment by an interested party other than the original submitter to the questionnaire response.	351.227(d)(2) (within 14 days after a questionnaire response has been filed with the Secretary by the original submitter).
X + 21	Filing of rebuttal, clarification, or correction comment to the rebuttal, clarification, or correction of factual comment of the interested party by the original submitter.	351.227(d)(2) (within 7 days of the filing of the rebuttal comment by interested party).
Z ⁴	Preliminary Determination	351.227(e) (may be between concurrently with Initiation and before Final Determination).
Z + 14 ⁵	Comment to Preliminary Determination by interested parties.	351.227(d)(3) (within 14 days after Preliminary Determination unless otherwise specified by Commerce).
Z + 21	Rebuttal comment to comment to Preliminary Determination by other interested parties ³ .	351.227(d)(3) (within 7 days after comment to Preliminary Determination unless otherwise specified by Commerce).
120	Final covered merchandise determination	351.227(c)(1) (within 120 days from the date of publication of the Notice of Initiation, unless (1) extended by no more than 150 days under 351.227(c)(2), or (2) aligned with other segments under 351.227(c)(3)).

¹ Indicates the approximate number of days from the date of publication of the Notice of Initiation. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.

² Commerce may issue a preliminary determination, either concurrently with the initiation or not. 19 CFR 351.227(e)(1). If Commerce issues a Preliminary Determination concurrently with Initiation, 19 CFR 351.227(d)(1)–(3) will not apply, pursuant to 19 CFR 351.227(d)(4). In such cases, Commerce will establish appropriate procedures on a case-specific basis. 19 CFR 351.227(d)(4).

³ X represents the date a questionnaire is received by Commerce.

⁴ Z represents the date of the Preliminary Determination.

⁵ If a Preliminary Determination is not issued concurrently with Initiation, Commerce will establish a schedule for the filing of comments and rebuttal comments to the Preliminary Determination. 19 CFR 351.227(d)(3).

[89 FR 103640, Dec. 19, 2024]