

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1801-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

**Executive Documents**

URUGUAY ROUND AGREEMENTS: ENTRY INTO FORCE

The Uruguay Round Agreements, including the World Trade Organization Agreement and agreements annexed to that Agreement, as referred to in section 3511(d) of this title, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 3511 of this title.

**§ 1671c. Termination or suspension of investigation**

**(a) Termination of investigation upon withdrawal of petition**

**(1) In general**

**(A) Withdrawal of petition**

Except as provided in paragraphs (2) and (3), an investigation under this part may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or by the administering authority if the investigation was initiated under section 1671a(a) of this title.

**(B) Refiling of petition**

If, within 3 months after the withdrawal of a petition under subparagraph (A), a new petition is filed seeking the imposition of duties on both the subject merchandise of the withdrawn petition and the subject merchandise from another country, the administering authority and the Commission may use in the investigation initiated pursuant to the new petition any records compiled in an investigation conducted pursuant to the withdrawn petition. This subparagraph applies only with respect to the first withdrawal of a petition.

**(2) Special rules for quantitative restriction agreements**

**(A) In general**

Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting, with the government of the country in which the countervailable subsidy practice is alleged to occur, an understanding or other kind of agreement to limit the volume of imports into the United States of the subject merchandise unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

**(B) Public interest factors**

In making a decision under subparagraph (A) regarding the public interest, the administering authority shall take into account—

(i) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on United States consumers than the imposition of countervailing duties;

(ii) the relative impact on the international economic interests of the United States; and

(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

**(C) Prior consultations**

Before making a decision under subparagraph (A) regarding the public interest, the administering authority shall, to the extent practicable, consult with—

(i) potentially affected consuming industries; and

(ii) potentially affected producers and workers in the domestic industry producing the like merchandise, including producers and workers not party to the investigation.

**(3) Limitation on termination by Commission**

The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 1671b(b) of this title.

**(b) Agreements to eliminate or offset completely a countervailable subsidy or to cease exports of subject merchandise**

The administering authority may suspend an investigation if the government of the country in which the countervailable subsidy practice is alleged to occur agrees, or exporters who account for substantially all of the imports of the subject merchandise agree—

(1) to eliminate the countervailable subsidy completely or to offset completely the amount of the net countervailable subsidy, with respect to that merchandise exported directly or indirectly to the United States, within 6 months after the date on which the investigation is suspended, or

(2) to cease exports of that merchandise to the United States within 6 months after the date on which the investigation is suspended.

**(c) Agreements eliminating injurious effect**

**(1) General rule**

If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement from a government described in subsection (b), or from exporters described in subsection (b), if the agreement will eliminate completely the injurious effect of exports to the United States of the subject merchandise.

**(2) Certain additional requirements**

Except in the case of an agreement by a foreign government to restrict the volume of imports of the subject merchandise into the United States, the administering authority

may not accept an agreement under this subsection unless—

(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

(B) at least 85 percent of the net countervailable subsidy will be offset.

**(3) Quantitative restrictions agreements**

The administering authority may accept an agreement with a foreign government under this subsection to restrict the volume of imports of subject merchandise into the United States, but it may not accept such an agreement with exporters.

**(4) Definition of extraordinary circumstances**

**(A) Extraordinary circumstances**

For purposes of this subsection, the term “extraordinary circumstances” means circumstances in which—

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

(ii) the investigation is complex.

**(B) Complex**

For purposes of this paragraph, the term “complex” means—

(i) there are a large number of alleged countervailable subsidy practices and the practices are complicated,

(ii) the issues raised are novel, or

(iii) the number of exporters involved is large.

**(d) Additional rules and conditions**

**(1) Public interest; monitoring**

The administering authority shall not accept an agreement under subsection (b) or (c) unless—

(A) it is satisfied that suspension of the investigation is in the public interest, and

(B) effective monitoring of the agreement by the United States is practicable.

Where practicable, the administering authority shall provide to the exporters who would have been subject to the agreement the reasons for not accepting the agreement and, to the extent possible, an opportunity to submit comments thereon. In applying subparagraph (A) with respect to any quantitative restriction agreement under subsection (c), the administering authority shall take into account, in addition to such other factors as are considered necessary or appropriate, the factors set forth in subsection (a)(2)(B)(i), (ii), and (iii) as they apply to the proposed suspension and agreement, after consulting with the appropriate consuming industries, producers, and workers referred to in subsection (a)(2)(C)(i) and (ii).

**(2) Exports of merchandise to United States not to increase during interim period**

The administering authority may not accept any agreement under subsection (b) unless that agreement provides a means of ensuring that the quantity of the merchandise covered by that agreement exported to the United States during the period provided for elimi-

nation or offset of the countervailable subsidy or cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representative period determined by the administering authority.

**(3) Regulations governing entry or withdrawals**

In order to carry out an agreement concluded under subsection (b) or (c), the administering authority is authorized to prescribe regulations governing the entry, or withdrawal from warehouse, for consumption of subject merchandise.

**(e) Suspension of investigation procedure**

Before an investigation may be suspended under subsection (b) or (c) the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation,

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced (including any action required of foreign governments), and of how the agreement will meet the requirements of subsections (b) and (d) or (c) and (d), and

(3) permit all interested parties described in section 1677(9) of this title to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A).

**(f) Effects of suspension of investigation**

**(1) In general**

If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c), then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 1671b(b) of this title with respect to the subject merchandise, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

**(2) Liquidation of entries**

**(A) Cessation of exports; complete elimination of net countervailable subsidy**

If the agreement accepted by the administering authority is an agreement described in subsection (b), then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of subject merchandise shall not be suspended under section 1671b(d)(2) of this title,

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 1671b(d)(1)(B) of this title.

**(B) Other agreements**

If the agreement accepted by the administering authority is an agreement described in subsection (c), then the liquidation of entries of the subject merchandise shall be suspended under section 1671b(d)(2) of this title, or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3), but the security required under section 1671b(d)(1)(B) of this title may be adjusted to reflect the effect of the agreement.

**(3) Where investigation is continued**

If, pursuant to subsection (g), the administering authority and the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c), then—

(A) if the final determination by the administering authority or the Commission under section 1671d of this title is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue a countervailing duty order in the case so long as—

(i) the agreement remains in force,

(ii) the agreement continues to meet the requirements of subsections (b) and (d) or (c) and (d), and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

**(g) Investigation to be continued upon request**

If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) the government of the country in which the countervailable subsidy practice is alleged to occur, or

(2) an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

**(h) Review of suspension**

**(1) In general**

Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and

which is described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

**(2) Commission investigation**

Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the subject merchandise is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 1671b(b) of this title had been made on that date.

**(3) Suspension of liquidation to continue during review period**

The suspension of liquidation of entries of the subject merchandise shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of the affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 1671b(d)(2) of this title, and

(B) release any bond or other security, and refund any cash deposit, required under section 1671b(d)(1)(B) of this title.

**(i) Violation of agreement**

**(1) In general**

If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 1671b(d)(2) of this title of unliquidated entries of the merchandise made on or after the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d) or (c) and (d), was first entered, or withdrawn from warehouse, for consumption,

(B) if the investigation was not completed, resume the investigation as if its affirmative

preliminary determination under section 1671b(b) of this title were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g), issue a countervailing duty order under section 1671e(a) of this title effective with respect to entries of merchandise the liquidation of which was suspended,

(D) if it considers the violation to be intentional, notify the Commissioner of U.S. Customs and Border Protection who shall take appropriate action under paragraph (2), and

(E) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

**(2) Intentional violation to be punished by civil penalty**

Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedure, as the penalty imposed for a fraudulent violation of section 1592(a) of this title.

**(j) Determination not to take agreement into account**

In making a final determination under section 1671d of this title, or in conducting a review under section 1675 of this title, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1), or continued an investigation under subsection (g), the Commission and the administering authority shall consider all of the subject merchandise, without regard to the effect of any agreement under subsection (b) or (c).

**(k) Termination of investigations initiated by administering authority**

The administering authority may terminate any investigation initiated by the administering authority under section 1671a(a) of this title after providing notice of such termination to all parties to the investigation.

**(l) Special rule for regional industry investigations**

**(1) Suspension agreements**

If the Commission makes a regional industry determination under section 1677(4)(C) of this title, the administering authority shall offer exporters of the subject merchandise who account for substantially all exports of that merchandise for sale in the region concerned the opportunity to enter into an agreement described in subsection (b) or (c).

**(2) Requirements for suspension agreements**

Any agreement described in paragraph (1) shall be subject to all the requirements imposed under this section for other agreements under subsection (b) or (c), except that if the Commission makes a regional industry determination described in paragraph (1) in the final affirmative determination under section 1671d(b) of this title but not in the preliminary

affirmative determination under section 1671b(a) of this title, any agreement described in paragraph (1) may be accepted within 60 days after the countervailing duty order is published under section 1671e of this title.

**(3) Effect of suspension agreement on countervailing duty order**

If an agreement described in paragraph (1) is accepted after the countervailing duty order is published, the administering authority shall rescind the order, refund any cash deposit and release any bond or other security deposited under section 1671b(d)(1)(B) of this title, and instruct the Customs Service that entries of the subject merchandise that were made during the period that the order was in effect shall be liquidated without regard to countervailing duties.

(June 17, 1930, ch. 497, title VII, §704, as added Pub. L. 96-39, title I, §101, July 26, 1979, 93 Stat. 154; amended Pub. L. 98-573, title VI, §§604(a), 612(b)(2), Oct. 30, 1984, 98 Stat. 3025, 3034; Pub. L. 99-514, title XVIII, §1886(a)(4), Oct. 22, 1986, 100 Stat. 2921; Pub. L. 100-418, title I, §1326(d)(2), Aug. 23, 1988, 102 Stat. 1204; Pub. L. 103-465, title II, §§216(a), 217(a), 218(a)(1), 233(a)(5)(D)-(M), 264(c)(3)-(6), 270(a)(1)(E), (2)(A), (c)(1), Dec. 8, 1994, 108 Stat. 4853, 4854, 4899, 4914, 4917; Pub. L. 114-125, title VIII, §802(d)(2), Feb. 24, 2016, 130 Stat. 210.)

**Editorial Notes**

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103-465, §217(a), designated existing provisions as subpar. (A), inserted heading, realigned margin, and added subpar. (B).

Subsec. (a)(2)(A). Pub. L. 103-465, §§233(a)(5)(D), 270(a)(1)(E), substituted “countervailable subsidy” for “subsidy” and “subject merchandise” for “merchandise that is subject to the investigation”.

Subsec. (b). Pub. L. 103-465, §270(a)(2)(A), (c)(1), in heading, substituted “countervailable subsidy” for “subsidy” and “subject merchandise” for “subsidized merchandise”.

Pub. L. 103-465, §§233(a)(5)(E), 270(a)(1)(E), in introductory provisions, substituted “countervailable subsidy” for “subsidy” and “subject merchandise” for “merchandise which is the subject of the investigation”.

Subsec. (b)(1). Pub. L. 103-465, §270(a)(1)(E), substituted “countervailable subsidy” for “subsidy” in two places.

Subsec. (c)(1), (2). Pub. L. 103-465, §233(a)(5)(F), (G), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.

Subsec. (c)(2)(B). Pub. L. 103-465, §270(a)(1)(E), substituted “countervailable subsidy” for “subsidy”.

Subsec. (c)(3). Pub. L. 103-465, §233(a)(5)(H), substituted “subject merchandise” for “merchandise which is the subject of an investigation”.

Subsec. (c)(4)(B)(i). Pub. L. 103-465, §270(a)(1)(E), substituted “countervailable subsidy” for “subsidy”.

Subsec. (d)(1). Pub. L. 103-465, §216(a), in concluding provisions, substituted “Where practicable, the administering authority shall provide to the exporters who would have been subject to the agreement the reasons for not accepting the agreement and, to the extent possible, an opportunity to submit comments thereon. In applying” for “In applying”.

Subsec. (d)(2). Pub. L. 103-465, §270(a)(1)(E), substituted “countervailable subsidy” for “subsidy”.

Subsec. (d)(3). Pub. L. 103-465, §233(a)(5)(I), substituted “subject merchandise” for “merchandise covered by such agreement”.

Subsec. (f)(1)(A). Pub. L. 103-465, § 233(a)(5)(J), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.

Subsec. (f)(2)(A). Pub. L. 103-465, § 270(a)(1)(E), substituted “countervailable subsidy” for “subsidy” in heading.

Subsec. (f)(2)(A)(i), (iii). Pub. L. 103-465, §§ 233(a)(5)(K), 264(c)(3), in cl. (i), substituted “subject merchandise” for “merchandise which is the subject of the investigation” and “1671b(d)(2)” for “1671b(d)(1)”, and in cl. (iii), substituted “1671b(d)(1)(B)” for “1671b(d)(1)”.

Subsec. (f)(2)(B). Pub. L. 103-465, §§ 233(a)(5)(K), 264(c)(4), substituted “subject merchandise” for “merchandise which is the subject of the investigation”, “1671b(d)(2)” for “1671b(d)(1)”, and “1671b(d)(1)(B)” for “1671b(d)(2)”.

Subsec. (g)(1). Pub. L. 103-465, § 270(a)(1)(E), substituted “countervailable subsidy” for “subsidy”.

Subsec. (h)(2). Pub. L. 103-465, § 233(a)(5)(L), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.

Subsec. (h)(3). Pub. L. 103-465, §§ 233(a)(5)(L), 264(c)(5), in introductory provisions, substituted “subject merchandise” for “merchandise which is the subject of the investigation”, in subpar. (A), substituted “1671b(d)(2)” for “1671b(d)(1)”, and in subpar. (B), substituted “1671b(d)(1)(B)” for “1671b(d)(2)”.

Subsec. (i)(1)(A). Pub. L. 103-465, § 264(c)(6), substituted “1671b(d)(2)” for “1671b(d)(1)” in introductory provisions.

Subsec. (j). Pub. L. 103-465, § 233(a)(5)(M), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.

Subsec. (l). Pub. L. 103-465, § 218(a)(1), added subsec. (l).

1988—Subsecs. (g)(2), (h)(1). Pub. L. 100-418 substituted “subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title” for “subparagraph (C), (D), (E), and (F) of section 1677(9) of this title”.

1986—Subsec. (d)(2), (3). Pub. L. 99-514, § 1886(a)(4)(A), added par. (2) and redesignated former par. (2) as (3).

Subsec. (i)(1)(D). Pub. L. 99-514, § 1886(a)(4)(B), substituted “intentional” for “international”.

1984—Subsec. (a). Pub. L. 98-573, § 604(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “An investigation under this part may be terminated by either the administering authority or the Commission after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner. The Commission may not terminate an investigation under the preceding sentence before a preliminary determination is made by the administering authority under section 1671b(b) of this title.”

Subsec. (d)(1). Pub. L. 98-573, § 604(a)(2)(A), inserted provision, following subpar. (B), that in applying subpar. (A) with respect to any quantitative restriction agreement under subsec. (c) of this section, the administering authority shall take into account, in addition to such other factors as are considered necessary or appropriate, the factors set forth in subsec. (a)(2)(B)(i), (ii), and (iii) of this section as they apply to the proposed suspension and agreement, after consulting with the appropriate consuming industries, producers, and workers referred to in subsec. (a)(2)(C)(i) and (ii) of this section.

Subsec. (d)(2), (3). Pub. L. 98-573, § 604(a)(2)(B), (C), redesignated par. (3) as (2) and struck out former par. (2) which provided that exports of merchandise to the United States were not to increase during the interim period.

Subsec. (e)(3). Pub. L. 98-573, § 604(a)(3), substituted “all interested parties described in section 1677(9) of this title” for “all parties to the investigation”.

Subsecs. (g)(2), (h)(1). Pub. L. 98-573, § 612(b)(2), substituted reference to subpar. “(C), (D), (E), and (F)” for “(C), (D), or (E)” of section 1677(9) of this title.

Subsec. (i)(1)(D), (E). Pub. L. 98-573, § 604(a)(4)(A)–(C), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (k). Pub. L. 98-573, § 604(a)(5), added subsec. (k).

## Statutory Notes and Related Subsidiaries

### CHANGE OF NAME

“Commissioner of U.S. Customs and Border Protection” substituted for “Commissioner of Customs” in subsec. (i)(1)(D) on authority of section 802(d)(2) of Pub. L. 114-125, set out as a note under section 211 of Title 6, Domestic Security.

### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103-465, set out as a note under section 1671 of this title.

### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 applicable with respect to investigations initiated after Aug. 23, 1988, and to reviews initiated under section 1673e(c) or 1675 of this title after Aug. 23, 1988, see section 1337(b) of Pub. L. 100-418, set out as a note under section 1671 of this title.

### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 604(a) of Pub. L. 98-573 effective Oct. 30, 1984, and amendment by section 612(b)(2) of Pub. L. 98-573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle, and to reviews begun under section 1675 of this title, on or after Oct. 30, 1984, see section 626(a), (b)(1) of Pub. L. 98-573, as amended, set out as a note under section 1671 of this title.

### TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107-296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114-125, and section 802(b) of Pub. L. 114-125, set out as a note under section 211 of Title 6.

### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1801-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

## § 1671d. Final determinations

### (a) Final determination by administering authority

#### (1) In general

Within 75 days after the date of the preliminary determination under section 1671b(b) of this title, the administering authority shall make a final determination of whether or not a countervailable subsidy is being provided